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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 ENRICHETTA RAVINA,

5 Plaintiff,

6 v.

16 CV 2137 (RA)

7 COLUMBIA UNIVERSITY,

Jury Trial

8 Defendant.

9 New York, N.Y.
10 July 23, 2018
1:45 p.m.

11 Before:

12 HON. RONNIE ABRAMS

13 District Judge

14 APPEARANCES

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1 (In open court; jury not present)

2 THE COURT: Good afternoon, everyone. I understand
3 you have some issues regarding exhibits you'd like to raise.

4 MR. MELZER: Yes, your Honor, we have a number of
5 exhibits that we'd like to discuss before the jury comes in and
6 resolve any objections. We talked about, these are documents
7 that are relevant to Professor Phillips, and we would like to
8 admit at this stage.

9 MS. PLEVAN: Part of the problem, and Ms. Fischer may
10 handle some of this, is that we're on the defendant's case now.
11 And if they want to cross-examine Professor Phillips and use
12 those documents or ask her about them. But I don't think it is
13 proper for them to just offer these exhibits. There are also a
14 lot of objections to a number of them.

15 THE COURT: I agree. I thought, I don't know if they
16 are same exhibits or not, but we already addressed this in
17 terms of exhibits that you didn't use with any witnesses, that
18 aren't being admitted pursuant to stipulation.

19 But that being said, with respect to any witnesses who
20 are still testifying, if you can lay a foundation through that
21 witness, and there is a proper basis for admissibility, then I
22 don't have a problem with it. But you can't just admit
23 documents you forgot to admit earlier.

24 MR. MELZER: We understand that, your Honor. They can
25 be admitted through this witness. We thought it would be

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1 efficient and facilitate the process to resolve and discuss
2 objections before the jury came in.

3 THE COURT: Okay. I'm happy to address the
4 objections.

5 MR. MELZER: So the first exhibit is actually a
6 defense exhibit, MY, so we don't expect that there would be any
7 objection to that one.

8 THE COURT: Again, if you don't think there is an
9 objection, you should go over them with counsel beforehand
10 before you bring them to me. Did you not do that?

11 MR. MELZER: Yes, we did.

12 THE COURT: Is there an objection?

13 MS. PLEVAN: We got the list as we were leaving the
14 office.

15 MS. FISCHER: MY is okay. We have no objection to
16 using it, assuming they're going to use it through this
17 witness.

18 THE COURT: Say that again, please?

19 MS. FISCHER: Assuming, as was just indicated, that
20 they'll use it, admit it through the witness.

21 THE COURT: Okay. So, it seems like there is no
22 objection.

23 MR. MELZER: So the next one. May I approach?

24 THE COURT: Yes.

25 MR. MELZER: The next one is Exhibit 113. And we

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1 think that there is a dispute about this exhibit.

2 From our position, this is a professor who is making
3 statements about the case, and then Professor Phillips is
4 making an admission, a party admission that she thinks he is
5 right.

6 MS. FISCHER: Your Honor, you may recall that this
7 came up when Dean Hubbard was testifying about this exact
8 document, and the Court would not allow it because this is a
9 hearsay document concerning settlement discussions. And it was
10 on those grounds that it was not permitted.

11 So I understand Katherine Phillips is the witness who
12 will be here. Victor Goldberg is somebody, you see the first
13 line, he got an e-mail from Professor Ravina asking for
14 recommendation for an arbitrator. And these are his, it is
15 about settlement discussions, and it is about things he heard
16 from her.

17 MR. MELZER: I think the relevant point here is that
18 Katherine Phillips is agreeing with what he is saying. "I
19 think he is right." Which is a party admission. It reflects
20 the administration's state of mind and view of these
21 circumstances, which is relevant to the case.

22 MS. FISCHER: It is still settlement discussions, and
23 it is still hearsay.

24 THE COURT: If it was just a hearsay objection, then I
25 wouldn't have a problem with her reaction to it. Because it's

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1 not being admitted for the truth of what was said. Rather, her
2 reaction and Dean Hubbard's reaction. But the settlement, if
3 this is in fact regarding settlement, then that's a separate
4 problem.

5 MS. FISCHER: It is about settlement. It is about the
6 the resolution. And I don't see how Professor Phillips could
7 address this e-mail and what it is she agrees or disagrees with
8 without getting into that.

9 MR. MELZER: This is also about discussions about
10 Columbia and I do think that Columbia has been able to get in
11 some testimony and evidence about discussions between the
12 lawyers in this context.

13 MS. PLEVAN: Nothing of substance, your Honor.

14 MR. HERNSTADT: On the second page in particular, this
15 I think is what we addressed last time. It starts at the
16 bottom of the third page. It starts at the bottom of the first
17 page and carries over. "Enrichetta told me that the other
18 party had pulled out of the arbitration." That's all about
19 settlement discussions. And then the whole commentary in the
20 third paragraph on the second page is all hearsay. It's very
21 prejudicial as well. He's making judgments as well as
22 implicating settlement.

23 MR. MELZER: We would agree to redactions about the
24 arbitration.

25 THE COURT: Then what's left? Even if he doesn't say

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1 the word "arbitration," what in this is not about arbitration
2 and what follows?

3 MR. MELZER: The last paragraph, the first couple of
4 sentences, and then Professor Phillips' response, "I think he
5 is right. Even though he's only heard half the story, but I
6 still think he is right."

7 THE COURT: Right about what exactly?

8 MR. MELZER: Right that she has a -- Geert's behavior
9 seems to be reprehensible and the response has been inadequate.

10 MS. FISCHER: Right that the situation has dragged on.

11 THE COURT: That's what it sounds like, that it's
12 dragged on.

13 MS. FISCHER: That's a reference to settlement
14 discussions.

15 MR. HERNSTADT: As is "I feel like my hands to be tied
16 by lawyers." This is all about settlement and about
17 negotiations that Mr. Goldberg knows nothing about, except
18 perhaps what Ms. Ravina told him. And which at least on one
19 side, even Ms. Phillips has limited knowledge.

20 MR. MELZER: I think half the story, when she's
21 talking about half the story, that doesn't refer to settlement
22 talks. He's not hearing half, but referring to half the story
23 meaning Professor Ravina's side of the case versus Professor
24 Bekaert's side of the case, and even though she's only heard
25 half the story, Dean Phillips still thinks she's right.

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1 MR. HERNSTADT: To be perfectly clear, the settlement
2 discussions at issue here are those between Professor Bekaert's
3 lawyers and Professor Ravina's lawyers. Columbia's lawyers are
4 not even involved.

5 THE COURT: I think this is too much about the
6 arbitration, about settlement, about hands being tied by
7 lawyers. So I don't think this should come in.

8 MR. MELZER: Thank you, your Honor.

9 THE COURT: Are there any other exhibits?

10 MR. MELZER: Yes. This one is 133 which has already
11 been redacted per the Court's instructions. So we think that
12 this has been gone over and should be admitted. We understand
13 there were objections at one point.

14 MR. HERNSTADT: Objection, your Honor.

15 MS. PLEVAN: At the proper time through a witness.

16 THE COURT: Are you doing it with Phillips' cross?

17 MR. MELZER: Yes.

18 THE COURT: All right. So there is no objection, I
19 don't think. Again, if you can go over these things in
20 advance, that would be helpful.

21 MR. HERNSTADT: We don't object to how it was edited.
22 That doesn't mean there won't be an objection as to how it's
23 sought to be admitted.

24 THE COURT: All right. Well, let's see with the
25 witness.

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1 MS. FISCHER: This particular document is actually two
2 things put together. So I'm not sure what counsel intended to
3 use it for.

4 THE COURT: 229?

5 MR. MELZER: 229.

6 MS. FISCHER: 229 is two things put together, and I
7 think what -- if I'm right, I think what you want is the first
8 page.

9 MR. MELZER: We intend to use the first page to
10 reflect Professor Phillips' prepared remarks for a meeting
11 relating to the tenure process for Professor Ravina. That's
12 what we believe this first page to be.

13 THE COURT: Were they attached initially?

14 MR. MELZER: Yes. They're sequential in Bates number
15 and they're labeled 229-1 and 229-2.

16 THE COURT: Aside from how they're produced in
17 discovery, were they connected as a single document initially?

18 MS. FISCHER: I think it's two different things, and
19 if counsel wants to use the first page, we have no objection
20 for what's been proffered here. I just think the second page
21 is something else.

22 MR. MELZER: That's fine, your Honor.

23 THE COURT: Okay.

24 MR. MELZER: There are just two more.

25 THE COURT: Okay.

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1 MR. MELZER: The next one is Exhibit 233. An e-mail
2 from Professor Calomiris to Kathy Phillips, and we think an
3 inference from this is it is a notice that Professor Ravina was
4 threatening to file suit in this case. And that it would
5 connect to other documents that would support a similar
6 inference.

7 MR. HERNSTADT: Your Honor, I object to the
8 parenthetical in the second paragraph on the third line.

9 MS. FISCHER: We object on hearsay because what
10 counsel is saying is that this is what was going to happen.
11 She was going to file a lawsuit. We don't know what Professor
12 Ravina told Professor Calomiris at this time, so we object to
13 the use of the document.

14 MR. MELZER: We do not seek to admit it for the truth.
15 Again, we seek to admit it for notice to Columbia that
16 Professor Ravina was threatening to bring a lawsuit. There was
17 an e-mail one week earlier from Professor Ravina to Professor
18 Zeldes which has been redacted expressing similar sentiments,
19 but a lot of the stuff that would suggest a lawsuit is coming
20 has been redacted. And we also think it connects to what
21 Professor Phillips testified about the message in December.

22 THE COURT: All right. I'll allow this in, but I am
23 going to take out that parenthetical on the third line of the
24 second paragraph.

25 MR. HERNSTADT: Your Honor, one observation, that this

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1 is not notice to Columbia of Professor Ravina's intent. It is
2 notice to Columbia of Professor Calomiris' hearsay observations
3 about what he thinks. He doesn't even say she's telling him
4 this, it seems to me. That seems, that's not notice of
5 anything, other than Professor Calomiris' interpretation of
6 what Professor Ravina hasn't even said to him. It seems so
7 attenuated it doesn't provide any useful notice.

8 MR. MELZER: In context it definitely supports an
9 inference that Professor Ravina is threatening to sue and that
10 Columbia is on notice of that intent.

11 THE COURT: All right. I'm going to allow it in with
12 that parenthetical out, and I'll instruct them it is not being
13 admitted for the truth. Then you can make the arguments on it
14 that it is just his perception. And you can cross Ms. Phillips
15 on that as well.

16 MR. MELZER: Thank you, your Honor.

17 The last one is Exhibit 155 and we have discussed this
18 between the parties and there is objection to it. And I can
19 tell you what our understanding of this is and what we intend
20 to use it for.

21 This is a message from Noel Capon who was a
22 longstanding professor at the business school. If you turn to
23 the last page, he was a business school community member since
24 1969, a faculty member since 1979, has been a tenured professor
25 since 1988, and is a former division chair from 2000 to 2006.

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1 He sent this to the faculty and administration of the
2 business school, Professor Phillips is one of the recipients,
3 Dean Hubbard was one of the recipients, and we intend to use a
4 specific line and we would be open to redacting the rest of the
5 of this message that he sent. That line is on page 155-7.

6 On the second-to-last paragraph, the first line, the
7 unprecedented acceleration in Ravina's case seems like a
8 baldfaced attempt to get rid of her.

9 And there are really two purposes for admitting that
10 statement. One is that it is notice to the administration of
11 faculty objections to proceeding with the vote at this time.
12 This was sent on April 11.

13 THE COURT: This again is hearsay. If you wanted to
14 call the witness, you could have called the witness. You
15 called Professor Bolton. So that's already in. You can go on
16 though to your next point.

17 MR. MELZER: Yeah, it does establish notice since the
18 administration is receiving it and then disregarding the
19 objections and proceeding with the vote just a couple days
20 later, similar to the faculty petitions. Another instance of
21 that kind of notice.

22 And the second reason is that it tends to rebut
23 Professor Phillips' statement on the stand in testimony that
24 timing issues are not procedural irregularities. And this
25 gentleman, who has been at the business school as a professor

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1 for 40 years, was a division chair, was intimately familiar
2 with the tenure process over all this time, is saying that in
3 his view, this is an unprecedented acceleration which would
4 be --

5 THE COURT: That's classic hearsay. That's not going
6 to come in.

7 This does raise a broader issue in my mind, which is
8 that I have, and we've been working together to keep out
9 anything that reflects offers made during settlement
10 discussions. Right. Pursuant to Rule 408.

11 But I do want to make sure that to the extent that she
12 was threatening suit and that's a protected activity, I want to
13 make sure that I haven't left that out of the story. So if
14 there is any, and that's why I just allowed in, even though it
15 wasn't directly on point, I allowed in one of the e-mails you
16 just mentioned which suggests that she's losing patience, which
17 suggests she may bring suit.

18 Is there anything that I have excluded that leaves out
19 the part of the story that she intended to file suit and maybe
20 we can reach a stipulation on that so settlement is not coming
21 in.

22 MR. MELZER: May Ms. Harwin address that?

23 THE COURT: Yes.

24 MS. HARWIN: Your Honor, I think there are some
25 redactions that have been to documents that make that very

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1 clear, her intent to bring suit. One of the examples is an
2 e-mail that proceeds very quickly. This e-mail from Charles
3 Calomiris, it is that e-mail we reviewed dated August 21, 2015
4 which has to do with her intent to bring suit. She talks about
5 not seeing an alternative, and in that part of the redacted
6 portion she talks specifically about her right to go to court.

7 MS. PLEVAN: Which exhibit are you referring to?

8 MS. HARWIN: 258. And it appears in a number of
9 different exhibits now with that content about going to court
10 redacted.

11 THE COURT: Is there any stipulation that can be
12 reached? Again, what I think is relevant is the timing, is the
13 notice to Columbia. I don't want settlement offers coming in.
14 If part of your allegation is that there was retaliation after
15 she threatens suit, the fact that she threatens suit.

16 MS. PLEVAN: I think she testified, your Honor, to
17 some extent. I don't know what the proffer would be. And
18 we'll certainly listen to what counsel says, but I think she
19 testified on her own case about filing a lawsuit against
20 Professor Bekaert, and about other aspects of --

21 THE COURT: Ms. Harwin, what do you think is missing
22 from the narrative, if anything? Perhaps nothing. About the
23 timing of her threat to sue and retaliation in response to
24 that?

25 MS. HARWIN: So, several things. I will say with

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1 respect to that first document, the August 21 e-mail that's
2 been significantly redacted, the clear words that she's talking
3 about going to court, that that's not just an inference but
4 something that's stated in the document. I do think is a
5 relevant thing that is not at this point before the jury in a
6 document.

7 I would say with respect to subsequent protected
8 activity, I think that this would be an appropriate subject for
9 stipulation. A couple sort of discrete things that there was a
10 ruling that when Professor Ravina testified regarding
11 communicating an intent to bring suit, and testified
12 subsequently that was testimony -- I'm sorry, that was a
13 communication through counsel. I think that second component,
14 that it was through counsel was not permitted, I think that's a
15 subject for stipulation.

16 THE COURT: Is any of that relevant to Ms. Phillips?

17 MS. HARWIN: No.

18 THE COURT: Why don't we finish her testimony and why
19 don't we revisit this issue, and give me the exact exhibit
20 numbers over the break.

21 Ms. Plevan, did you want to respond briefly?

22 MS. PLEVAN: No. I don't think we would stipulate to
23 that. But there is other testimony of other protected
24 activity. It is not just filing a lawsuit or threatening to
25 file a lawsuit.

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Phillips - Direct

1 THE COURT: Right. But if there is an allegation that
2 there was specific retaliation after the threat to file the
3 lawsuit, the jury needs to know when the threat to file the
4 lawsuit was made.

5 MS. PLEVAN: I think the plaintiff testified about
6 that.

7 THE COURT: All right. So let's talk about that at
8 the break. All right? Okay. We're ready for the jury. Thank
9 you.

10 Good afternoon.

11 THE WITNESS: Hi.

12 (Jury present)

13 THE COURT: I'll remind you, you're still under oath.

14 KATHERINE PHILLIPS,

15 called as a witness by the Defendant,

16 having been previously sworn, testified as follows:

17 DIRECT EXAMINATION (Continued)

18 BY MS. FISCHER:

19 Q. Good afternoon, Professor Phillips.

20 In the spring of 2016, did you become aware of
21 questions or concerns that faculty members may have had about
22 Professor Ravina's tenure review process?

23 A. Yes, I did become aware of that.

24 Q. How did you become aware?

25 A. Conversation with Steve Zeldes, who was the chair at the

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Phillips - Direct

1 time.

2 Q. Are you aware of anything that happened in response to
3 hearing of those concerns?

4 A. Yes. So we decided that we would have a meeting to try to
5 answer some of those questions that the faculty had.

6 Q. Do you recall when that meeting was held?

7 A. It was some time in April of 2016.

8 Q. Who was invited to the meeting?

9 A. It was the senior faculty, tenured faculty of the Finance
10 and Economics Division. Myself, Glenn Hubbard was there, the
11 dean.

12 Q. Was there this before the divisional meeting where the vote
13 was scheduled to take place on Professor Ravina's tenure case?

14 A. Yes.

15 Q. Did you prepare remarks in advance of that meeting?

16 A. I did, I wrote down some things, yes.

17 MS. FISCHER: Can we please pull up Defendant's
18 Exhibit E, for the witness. We're using the first page of this
19 document which we've labeled E-1.

20 Q. Professor Phillips, do you recognize this document?

21 A. Yes.

22 Q. Are these the remarks that you prepared?

23 A. It looks like it, yeah.

24 MS. FISCHER: We offer E-1.

25 MR. MELZER: No objection.

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Phillips - Direct

1 THE COURT: E-1 will be admitted.

2 (Defendant's Exhibit E-1 received in evidence)

3 Q. So Professor Phillips, at that April meeting that you just
4 testified to, did you read this to the faculty who were
5 present?

6 A. I didn't read it in its entirety. I do remember reading
7 the bullet points or the numbered one and two points pretty
8 much in their entirety to the group.

9 Q. I want to start briefly with the first paragraph. The
10 first paragraph, the sentence that begins on the second line
11 says, "As you know, there are several matters regarding
12 Enrichetta's time here that are now in the hands of the courts
13 for consideration. These are issues that we as a faculty
14 cannot resolve, they are matters for litigation that should not
15 be discussed here today."

16 What did you mean by that statement?

17 A. Well, I was trying to convey for the faculty and for
18 everybody in the room that there were issues that the lawyers
19 and that people were involved in trying to resolve, and that we
20 as a faculty were not lawyers, we couldn't kind of litigate the
21 issues, and so we -- that really wasn't our job to do.

22 So I was trying to try to keep the conversation
23 focused and not, you know, kind of having people bringing in
24 information from kind of, that wasn't relevant or that wasn't
25 pertinent for the conversation that day.

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Phillips - Direct

1 Q. Did you tell the faculty members at that meeting that they
2 could not take Professor Ravina's complaints or allegations
3 concerning Professor Bekaert into account?

4 A. No, I did not.

5 Q. Let's look at point one, number one on this page. Starting
6 on the fourth line, at the end of that line, it says,
7 "According to the tenure procedures, candidates are to be
8 considered for tenure by the end of the sixth year on the
9 tenure clock, usually toward the end of the spring semester.
10 If the candidate agrees, the tenured faculty members in the
11 division meet to decide whether to consider a candidate for
12 tenure. As you know, this did not happen in Enrichetta's
13 case."

14 What did you mean by that?

15 A. This is actually a direct quote from the tenure materials,
16 the procedure documents that we use at the school which I
17 believe we've already seen here.

18 Basically, I wrote all of this down to try to make
19 sure that I understood and everyone in the room understood how
20 each year of Professor Ravina's time on the clock was being
21 counted. And basically to convey that, you know, it seemed to
22 me there were kind of questions or concerns about the timing of
23 when we were having this meeting. And so I was trying to
24 convey to everyone that we were aware, the meeting was supposed
25 to happen but it didn't happen. So, now we're at this time.

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Phillips - Direct

1 Q. Looking now at the next point, two, at the beginning. It
2 says, "Enrichetta had one leave in 2012-2013 that extended her
3 tenure clock. This can only happen once under university
4 statutes. The only other type of leave that extends the tenure
5 clock without special approval from the provost but still must
6 be approved is a parental workload relief. Other stoppage of
7 the tenure clock can only happen if the candidate agrees to go
8 off track and stop the clock, and this is rarely used and only
9 under the permission of the university. The university offered
10 Enrichetta this means of temporarily going off the tenure track
11 and thereby postponing her tenure decision. This would also
12 allow her to still be paid and still be working here at the
13 university."

14 Is that a reference to the associate research scholar
15 role?

16 A. Yes, it is.

17 Q. The next sentence, "Her tenure meetings were delayed within
18 the 2015-16 year as she considered this option, and the hope
19 was that a solution could be worked out."

20 What did you mean by that?

21 A. My understanding was that there were kind of lots of
22 conversations happening between the lawyers of the university
23 and of Professor Ravina, and that they were trying to find some
24 kind of reconciliation for the situation that we were in.

25 I certainly was kind of informed that I should kind of

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Phillips - Direct

1 hold off on -- on moving things forward because there was a
2 potential opportunity for reconciliation to happen that would
3 potentially change the timing of her tenure review. So, it was
4 basically a reference to us kind of waiting.

5 We also, my understanding was, she had been offered in
6 those conversations something that would delay the tenure
7 review and that would still allow her to be paid and on the
8 faculty. So that was, it was really just me trying to
9 communicate to the faculty that we, we've delayed kind of as
10 long as we could in this situation, and that a reconciliation
11 had not, had not happened up to this point.

12 MR. MELZER: Objection. Hearsay.

13 THE COURT: Overruled.

14 Q. The next sentence, "The delay provided Enrichetta
15 additional time within her 2015-16 tenure review year, but as
16 she approaches the end of the seventh year on her tenure clock,
17 the business school is now faced with the deadline per
18 university statutes."

19 What did you mean by that?

20 A. My understanding is that the university statute says that a
21 person should be reviewed for tenure within the seventh year,
22 before the seventh year is over, such that either they become
23 tenured at the beginning of the eighth year, or the eighth year
24 is basically the terminal year. Because you can't enter the
25 ninth year without having a tenure decision made.

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Phillips - Direct

1 So, my understanding is that we had to do it before
2 the seventh year ended.

3 Q. Is it your understanding that after this meeting the
4 divisional meeting was held?

5 A. Yes, it is my understanding that there was a division
6 meeting thereafter.

7 Q. You were not present at that meeting, were you?

8 A. No.

9 MS. FISCHER: Can we please show the witness Exhibit
10 QH which has been redacted.

11 Q. Professor Phillips, was the outcome of the vote at the
12 divisional level communicated to you?

13 A. Yes, it was. By this e-mail.

14 MS. FISCHER: We offer QH as redacted.

15 THE COURT: Any objection?

16 MR. MELZER: Hearsay.

17 MS. FISCHER: This is a business record. This is
18 how -- I'm happy to go to sidebar.

19 THE COURT: Why don't we go to sidebar. Thank you.

20 (Continued on next page)

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Phillips - Direct

1 (At the sidebar)

2 MS. FISCHER: First of all, as you can see, we've
3 redacted out the information that we've discussed.

4 THE COURT: Right.

5 MS. FISCHER: This is a business record. The
6 procedure of the school, which we discussed at length, is first
7 there is the divisional vote, and the outcome of the divisional
8 vote is reported to the promotion and tenure committee, and
9 they take over from there and does their review depending on
10 whether the vote was positive or negative at the divisional
11 level. This is just showing that that was reported in the
12 normal course. No substance to it.

13 THE COURT: Lay the foundation for that and we'll
14 revisit.

15 MR. MELZER: There should be redaction of the numbers.
16 We weren't allowed to use numbers about people who --

17 MS. FISCHER: I think that number doesn't say how
18 people voted. It shows there was a quorum. That's all that
19 shows.

20 MR. MELZER: Because there was a vote, there is
21 necessarily a quorum. If there was no quorum, there couldn't
22 have been a vote.

23 THE COURT: I think consistent with my prior rulings,
24 we'll take out the number of faculty members. It will be clear
25 to the jury that the numbers are just not included.

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Phillips - Direct

1 (In open court)

2 BY MS. FISCHER:

3 Q. Professor Phillips, at the time that you were Senior Vice
4 Dean at Columbia Business School, would the outcome of a
5 divisional vote be reported to you in the normal course?

6 A. Yes, it would be reported to me.

7 THE COURT: In what form would it be reported?

8 THE WITNESS: Usually by e-mail like this. From the
9 Division Chair.10 THE COURT: Okay. Is the Division Chair the person
11 who would have the information at the time?12 THE WITNESS: Yes. The Division Chair is the person
13 who basically is the person who heads the division, and they
14 are the one who is responsible for making sure that the
15 division has its meeting, that a vote is taken, and that the
16 vote is communicated to the dean's office. So, this is, this
17 is normally how the information would be communicated to me.18 THE COURT: So I'm going to admit this as a business
19 record. We'll redact the numbers pursuant to my ruling.

20 (Defendant's Exhibit QH received in evidence)

21 Q. Professor Phillips, is this the e-mail where you found out
22 the result of the divisional vote on Professor Ravina's tenure
23 case?

24 A. Yes it is.

25 Q. Did Professor Ravina pass the divisional vote?

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Phillips - Direct

1 A. No, she did not. She did not have a positive vote.

2 Q. What was the next step in the tenure review process after
3 Professor Ravina did not pass the divisional vote?

4 A. So, the materials that were reviewed by the division, the
5 CV, her papers, her personal statement, cite count, teaching
6 record, everything that they reviewed basically is passed on to
7 the promotion and tenure committee. And then the promotion and
8 tenure committee reviews that material, and they have a
9 conversation about the divisional process.

10 Q. Did you become aware of additional questions or concerns
11 about the process prior to the promotion and tenure meeting?

12 A. Yes, I did become aware of more questions.

13 MS. FISCHER: Can we please show the witness I believe
14 Plaintiff's 163 which is in evidence. And let's start with
15 page two.

16 Q. On the bottom of page two, do you recognize this as an
17 e-mail that you sent? It continues on the next page, but right
18 now I'm looking at the bottom of page two.

19 A. Yes, it was the e-mail regarding the schedule and agenda
20 issues for the promotion and tenure committee that was to be
21 happening very soon thereafter.

22 Q. If we look at the next page, on the agenda, it says kind of
23 toward the top of the pages, "Promotion to tenure Enrichetta
24 Ravina Finance and Economics."

25 Does that mean her tenure case was scheduled to be

I7N3RAV1

Phillips - Direct

1 addressed by the P&T on April 20?

2 A. Yes, that's what that means.

3 Q. Let's look at the first page of this exhibit. First page.

4 It is this an e-mail you received from Awi Federgruen?

5 A. Yes, this is an e-mail I received from Awi Federgruen.

6 Q. Who was that?

7 A. Awi was one of the representatives on the promotion and
8 tenure committee. He was on the DRO division, which is the
9 decision, risk and operations division of the school.

10 Q. Via e-mail at least did he express that he had questions or
11 concerns about the process?

12 A. Yes, he communicated to not only myself, but to all the
13 members of the promotion and tenure committee that he wanted to
14 make sure that we had a conversation about how the P&T
15 committee should kind of go forward with addressing Enrichetta
16 Ravina's case, and so he kind of laid out some kind of things
17 from the documents that we usually use. He kind of pulled some
18 information out. Was trying to think through kind of the
19 situation we were in. And he followed with a number of
20 questions. Maybe, I don't know, 15 or more questions, to try
21 to make sure that all the details that he wanted to understand
22 were laid out.

23 Q. We can look at the last, if we can look at the last two
24 pages, I'm sorry. Pages six and seven of this document.

25 Are these the questions you were just referring to?

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Phillips - Direct

1 A. Yes.

2 Q. Looking back at the first page, the date on this e-mail is
3 April 20, 2016. Was that the day of the promotion and tenure
4 or P&T committee meeting concerning Professor Ravina?5 A. Yes, I'm pretty sure that the meeting happened a little
6 later after this e-mail was sent. Maybe an hour and a half or
7 more.

8 Q. Can we pull up Exhibit QK.

9 Do you recognize this document?

10 A. Yes.

11 Q. What do you recognize this document to be?

12 A. It is basically an agenda document that my assistant Monica
13 Lewis would create for all of our promotion and tenure
14 committee meetings, just as an agenda.

15 MS. FISCHER: We offer QK.

16 MR. MELZER: No objection.

17 THE COURT: QK will be admitted.

18 (Defendant's Exhibit QK received in evidence)

19 Q. This document, this agenda that's dated 4/20/2016, if you
20 look at number nine on the first page, it says Enrichetta
21 Ravina, Finance and Economics Division, Assistant Professor.22 Does that indicate to you this is the date that the
23 committee discussed her case?

24 A. Yes.

25 Q. Given your role as Senior Vice Dean, were you present when

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Phillips - Direct

1 the promotion and tenure committee met concerning Professor
2 Ravina's tenure case?

3 A. Yes, I was.

4 Q. What was your role in that process?

5 A. My role in the process is to kind of facilitate the group
6 discussion, to make sure that we kind of go over all of the
7 things that are on the agenda. I take, you know, keep track of
8 the time and I try to make sure that the members have whatever
9 documentation they want.

10 Q. If we can pull up QK for another moment. Right on the top
11 there it says "committee members" and there is a list of names.
12 What is that a reference to?

13 A. So, the promotion and tenure committee has a representative
14 from each of six subgroups in the school. So, each one of
15 these members is a representative from one of the divisions in
16 the school. At the time we had five divisions, but you see
17 that there's six people there because the Finance and Economics
18 Division, both the Finance side and the Economics side had a
19 representative on the committee.

20 Q. Who were those representatives from the Finance and
21 Economics Division?

22 A. Yeah, so Robert Hodrick was the representative for the
23 finance side, and Wouter Dessein, number two, was the
24 representative from the Economics side.

25 Q. When the promotion and tenure committee met that day, how

I7N3RAV1

Phillips - Direct

1 did the meeting begin?

2 A. So --

3 MR. MELZER: Objection to what was discussed during
4 the meeting on hearsay.

5 THE COURT: Do you want to respond?

6 MS. FISCHER: Can we have a sidebar?

7 THE COURT: Sure.

8 (Continued on next page)

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Phillips - Direct

1 (At the sidebar)

2 THE COURT: I've already ruled that what was presented
3 to the faculty members at the tenure meeting should be
4 admitted. So, just walk me through the difference between that
5 and their discussions.

6 MS. FISCHER: Sure. So, at the tenure meeting, at the
7 divisional level, it is a substantive discussion of the
8 qualifications for tenure. This is a procedural discussion
9 where the process was followed. And that's the question before
10 the promotion and tenure committee. And what we're trying to
11 elicit is that they discussed these procedural concerns that he
12 had raised.

13 Plaintiff has made I don't know how many arguments on
14 notice. That people were concerned, that they discussed those
15 concerns, and that they followed the process. This was a
16 process followed. The P&T committee discussed whether the
17 process below had been followed. That's what we want to get
18 out what happened at the meeting.

19 MR. MELZER: What was said between the members at the
20 meeting are hearsay, and I which don't believe there is a
21 non-hearsay purpose.

22 MS. FISCHER: It's not offered for the truth.

23 THE COURT: Are you going to elicit who said what?

24 MS. FISCHER: The nature of the discussion.

25 THE COURT: I'm going to allow it in for context as

I7N3RAV1

Phillips - Direct

1 what she and others at Columbia did about it. But I don't
2 think we need to get into who said what.

3 MS. FISCHER: Okay. That wasn't my intention.

4 THE COURT: I think if you want me to give an
5 instruction that what was said is not being admitted for the
6 truth, but for how Columbia handled the situation, I'm amenable
7 to that.

8 MS. FISCHER: That's fine.

9 MR. MELZER: We would appreciate that.

10 (Continued on next page)

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Phillips - Direct

1 (In open court)

2 Q. Professor Phillips, generally speaking, what issues, what
3 was the first issue that was addressed at this meeting?

4 A. So our conversation usually we opened up with a just kind
5 of, you know, hellos and kind of a discussion about the agenda
6 for the day. When we jumped into Enrichetta Ravina's
7 conversation, we started with the issues that Awi Federgruen
8 had brought up.

9 THE COURT: In your recitation in saying what
10 happened, I want to let you know I'm not admitting anyone
11 else's statements for the truth of those statements, but
12 rather, how Columbia handled the situation.

13 So please continue.

14 A. So, Awi Federgruen basically started the discussion a
15 little bit kind of saying you guys got this e-mail that I sent
16 you a little while ago.

17 I actually, you know, kind of gave a little bit of a
18 statement, you guys saw earlier the document that had numbered
19 bullet points one and two on it. I basically, you know, kind
20 of shared that, those bullet points with the group.

21 I said, well, let's make sure we are all on the same
22 page about the timing when she came to Columbia, each year that
23 she's been on the tenure track, kind of the fact that there,
24 there certainly has been litigation and conversations with lots
25 of legal counsel and things. That we are, at this current

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Phillips - Direct

1 time, you know, after lots of delays, and that this is a, this
2 is now a moment where we have to kind of do a job that maybe
3 none of us want to do, but that we basically have a job to do
4 here.

5 So we had that conversation. We looked at some of the
6 questions. I think some of what I said answered some of
7 Professor Federgruen's questions, but we continued to have some
8 discussion until everybody on the promotion and tenure
9 committee kind of felt like their questions had been answered
10 and that they, you know, were basically comfortable with moving
11 forward with our discussion.

12 We continued to discuss the actual, you know, kind of
13 the case itself. So then we started the discussion of the
14 case. Any time we discussed a case, usually what happens is
15 the, the members of that particular division report to the
16 promotion and tenure committee basically the process that the
17 division followed. So they report, you know, kind of we had a
18 meeting, we had a quorum, we had a vote, we had a reading
19 committee. The reading committee presented. They talk about
20 the content of the conversation, and the promotion and tenure
21 committee members who have also read all of the materials
22 available to them have, you know, pretty in-depth conversation
23 about, about the case. About the pros and cons of the
24 materials that they've seen, about the case itself.

25 And so they had a discussion about the case, and at

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Phillips - Direct

1 some point, you know, it sounded like the discussion was kind
2 of coming to an end, and that's the point when I usually say,
3 you know, are you -- do you guys think you're finished, you
4 know, with the conversation. Is there anything else that
5 anybody else would like to say. If not, then we should move on
6 to the next, to the next thing on our agenda, because we had
7 other things on the agenda as well.

8 (Continued on next page)

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Phillips - Direct

1 Q. So, first, with respect to the process that you just
2 testified to, did the P&T committee consider whether the
3 process with respect to Professor Ravina's tenure case was fair
4 and without irregularities as provided in the tenure
5 guidelines?

6 A. Yes. There was actually a lot of discussion about that
7 when we were talking about Avi Federgruen's questions, because
8 some of his questions revolved around that kind of fair and
9 irregular, what does that mean, how do we assess that?

10 The conversation we had around that was really again
11 to kind of say we need to focus on the divisional process. Did
12 they have a reading committee? Did they have a quorum? Did
13 they take a private vote? Did they report the vote to us?

14 We did have quite a bit of conversation about the fair
15 and irregular guideline in the document.

16 Q. In addition to the discussion about the process, was there
17 a substantive discussion about Professor Ravina's record?

18 A. There was, yes. There was a substantive conversation.

19 Q. Can you tell us about that discussion?

20 A. So that discussion basically looked at the CV and the
21 number of papers that had been published. There was discussion
22 about the specific papers that were on her CV that had been
23 published and ones that had not been published. So there was a
24 discussion -- I don't remember all the details of the
25 discussion, because my role there is not to basically evaluate,

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Phillips - Direct

1 you know, the candidate, but it's to make sure that the process
2 is being followed.

3 So I don't really remember all the details of the
4 substance, and I think there I would be uncomfortable, because
5 it is not things that I said. It is things that other people
6 said about the quality of the work that she was doing. But
7 there was definitely a substantive conversation about the work.

8 Q. At this meeting was there any indication that Bob Hodrick
9 was prejudiced against Professor Ravina to your understanding?

10 A. No.

11 MR. MELZER: Objection to speculation.

12 THE COURT: Yes.

13 Why don't you rephrase that.

14 MS. FISCHER: Sure.

15 BY MS. FISCHER:

16 Q. Did you perceive Bob Hodrick -- to your own perception, did
17 you perceive him to be prejudiced in any way concerning
18 Professor Ravina?

19 A. No, I did not.

20 MR. MELZER: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: Sorry.

23 BY MS. FISCHER:

24 Q. Did you ever speak with Professor Bekaert about the P&T
25 committee's consideration of Professor Ravina's tenure case

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Phillips - Cross

1 substantively?

2 A. No, I did not.

3 Q. Did Professor Bekaert ever contact you and attempt to
4 communicate with you concerning the P&T committee's review of
5 Professor Ravina's tenure, case the substance of it?

6 A. Not the substance of it. I recall maybe an e-mail from
7 Professor Bekaert just kind of saying I understand that maybe
8 meetings are happening, and I think he might have said he was
9 concerned about what people might be hearing.

10 MS. FISCHER: Nothing further.

11 THE COURT: All right.

12 Cross-examination.

13 CROSS EXAMINATION

14 BY MR. MELZER:

15 Q. Good afternoon, Professor Phillips.

16 A. Hello.

17 Q. I am just going to ask you to confirm a couple of things
18 for the record while you're here.

19 MR. MELZER: I would like to show the witness Exhibit
20 233 that's been redacted as we've discussed.

21 Mr. McLeod, can you pull it up for the witness.

22 BY MR. MELZER:

23 Q. Professor Phillips, is this an e-mail that you received
24 from Charles Calomiris on August 28, 2015?

25 A. Yes.

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Phillips - Cross

1 Q. And Professor Calomiris is a professor in the business
2 school, is that correct?

3 A. He is. He is a professor in the finance and economics
4 division.

5 MR. MELZER: I would like to enter this exhibit into
6 evidence as Plaintiff's Exhibit 233.

7 THE COURT: All right.

8 It will be admitted.

9 (Plaintiff's Exhibit 233 received in evidence)

10 MR. MELZER: Can we publish that to the jury.

11 BY MR. MELZER:

12 Q. I would like next to direct your attention to Defendants'
13 Exhibit MY.

14 THE WITNESS: Thank you.

15 Q. To the bottom of the -- to the second page. Is this an
16 e-mail that you sent to Enrichetta Ravina copying Division
17 Chair Stephen Zeldes?

18 A. Yes, it is.

19 Q. And then, turning to the first page, the middle e-mail, is
20 that something that Professor Ravina wrote to you in response?

21 A. Yes.

22 Q. And then turning to the top e-mail, you forwarded that to
23 Christopher Brown in the provost's office a couple of weeks
24 later, on January 7, 2016?

25 A. Yes.

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Phillips - Cross

1 MR. MELZER: I would like to enter Defendants' Exhibit
2 MY into evidence.

3 THE COURT: Any objection?

4 MS. FISCHER: No objection.

5 THE COURT: MY will be admitted.

6 (Defendants' Exhibit MY received in evidence)

7 MR. MELZER: And publish this to the jury, this e-mail
8 chain.

9 THE COURT: Yes. Go ahead.

10 BY MR. MELZER:

11 Q. I would next like to show you what's been marked as
12 Plaintiff's Trial Exhibit 133, which has been redacted.

13 MR. MELZER: Mr. McLeod, can you pull that up, please.

14 THE DEPUTY CLERK: Is it admitted?

15 MR. MELZER: It's not admitted yet, I don't think.

16 BY MR. MELZER:

17 Q. The bottom e-mail, is that an e-mail from Professor
18 Bekaert, sent to you on February 20, 2016?

19 A. Yes, it is.

20 Q. And he said, "I was told that a meeting on Enrichetta's
21 tenure case has already happened. That would have been a good
22 opportunity to be a bit more informative. I shudder at the
23 thought of what misinformation could have been relayed at that
24 meeting regarding the case."

25 A. Yes.

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Phillips - Cross

1 Q. And you responded to him in the top e-mail, also from
2 February 20, saying, "E.R.'s tenure case has not been discussed
3 in the division."

4 "E.R." refers to Enrichetta Ravina?

5 A. Yes, sir.

6 Q. "Something is on the schedule; however, conversations are
7 still ongoing between the lawyers and may change those plans."

8 Is that what you said in the e-mail?

9 A. Yes.

10 MR. MELZER: I would like to enter this e-mail chain
11 into evidence as Trial Exhibit 133 and to publish it to the
12 jury.

13 MS. FISCHER: No objection.

14 THE COURT: You have already read it to the jury, but
15 you can publish it as well.

16 So it will be admitted.

17 MR. MELZER: Useful to see it too.

18 (Plaintiff's Exhibit 133 received in evidence)

19 BY MR. MELZER:

20 Q. Did you have a deposition taken in this case approximately
21 a year ago, in June 2017?

22 A. Yes, sir, I did.

23 Q. At the time of your deposition, you were not aware of any
24 efforts being made at Columbia Business School to ensure that
25 systematic gender bias does not occur at Columbia Business

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Phillips - Cross

1 School, is that correct?

2 MS. FISCHER: Objection.

3 THE COURT: Sustained.

4 BY MR. MELZER:

5 Q. You are not aware of any efforts being made at Columbia
6 Business School to ensure that systematic --

7 MS. FISCHER: Objection.

8 Q. -- gender bias --

9 THE COURT: Can we have a sidebar for a second.

10 (Continued on next page)

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Phillips - Cross

1 (At sidebar)

2 THE COURT: What are you doing?

3 MR. MELZER: I am asking her to confirm that she was
4 not aware of efforts to ensure that there was no systematic
5 discrimination at Columbia Business School.

6 THE COURT: Instead of referring to her deposition,
7 why don't you just ask her a question. If you need to, ask her
8 a question, but don't suggest to the jury that she said
9 something previous on a prior occasion. If you want to ask a
10 question, I will allow it over your objection anyway. But just
11 procedurally.

12 MR. MELZER: That's the way I was starting to ask it a
13 second time.

14 THE COURT: You suggested she said it on a prior
15 occasion. You don't have any basis for doing that.

16 MS. FISCHER: We object to this line of questioning.
17 As it is, there is no claim of direct discrimination by
18 Columbia in case. There is no relevance to the statements that
19 are being proffered.

20 THE COURT: That is a fair point.

21 What is your response?

22 MR. MELZER: I think there is a lot of testimony and
23 evidence that has come out in this case about failures in
24 policy, failures in the investigative process, and that that
25 occurs at a systematic level, and the fact that there is no

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Phillips - Cross

1 evidence of efforts to address that, you know, goes to the
2 issues in this case regarding negligence and Columbia's
3 response to what was occurring.

4 THE COURT: Read the question again.

5 MS. PLEVAN: This is about hiring practices and
6 diversity, not about investigations.

7 MR. HERNSTADT: There's been no testimony about
8 systematic.

9 THE COURT: Read the question you asked.

10 MR. MELZER: "Is it correct that you are not aware of
11 efforts being made at Columbia Business School to ensure that
12 systematic gender bias does not occur at Columbia Business
13 School?"

14 MR. HERNSTADT: There is no foundation.

15 MR. MELZER: She was the senior vice dean at the time.

16 THE COURT: I will let you ask it, but then I can make
17 clear to the jury that there's no direct discrimination case.

18 MS. FISCHER: Then why we are doing this. It is not
19 relevant. It's misleading. It's suggestive and it's
20 misleading. If we are going to open up this door, then we are
21 going to have to go into all the diversity initiatives that
22 Columbia has. It has no bearing on the claims being litigated.

23 MR. HERNSTADT: There is a classic "have you stopped
24 doing something" question.

25 THE COURT: There is no foundation.

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Phillips - Cross

1 Could you read the question one more time.

2 MR. MELZER: "Are you aware of efforts being made at
3 Columbia Business School to ensure that systemic gender bias
4 does not occur at Columbia Business School?"

5 THE COURT: I am going to sustain the objection to
6 that.

7 MR. MELZER: OK.

8 THE COURT: Let's move on from this.

9 MR. HERNSTADT: Your Honor.

10 THE COURT: Yes.

11 MR. HERNSTADT: He's already asked it as if reading
12 from the deposition. I don't know if there's any kind of an
13 instruction.

14 THE COURT: I will sustain the objection, and strike
15 the question.

16 MS. FISCHER: Thank you.

17 (Continued on next page)

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Jiang - Direct

1 (In open court)

2 MR. MELZER: I have no further questions.

3 THE COURT: I am going to sustain that last objection,
4 so we are going to strike that last question.

5 Do you have any redirect?

6 MS. FISCHER: No further questions.

7 THE COURT: You can step down. Thank you.

8 THE WITNESS: Thank you.

9 Just leave all these here?

10 THE COURT: Yes. Thank you.

11 (Witness excused)

12 THE COURT: The defendants may call their next
13 witness.

14 MS. FISCHER: Columbia calls Wei Jiang.

15 WEI JIANG,

16 called as a witness by Defendant Columbia,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. FISCHER:

20 Q. Good afternoon, Professor Jiang. Can you please tell us
21 your educational background, starting with college.22 A. I obtained my bachelor in economics from Fudan University
23 in Shanghai, China. I then obtained my Ph.D. in economics from
24 the University of Chicago.

25 Q. Did you start working after receiving your Ph.D.?

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Jiang - Direct

1 A. Yes, I did.

2 Q. Where did you work?

3 A. I joined Columbia Business School in 2001, right after I
4 obtained my Ph.D. degree.

5 Q. Have you been working at Columbia Business School since you
6 received your Ph.D.?

7 A. All the time, except one year, academic year of 2006 to
8 2007, when I worked in Wharton School in the University of
9 Pennsylvania.

10 Q. Did you receive tenure at Columbia Business School?

11 A. Yes, I did.

12 Q. When did you receive tenure?

13 A. 2009.

14 Q. What division are you in at Columbia Business School?

15 A. At the time when I joined, it was finance and economics
16 division, and currently just the finance division because it
17 split, two divisions split last year.

18 Q. You currently have a position in the dean's office at
19 Columbia Business School?

20 A. Yes, I do.

21 Q. And what position do you have in the dean's office?

22 A. I am currently the vice dean for curriculum and
23 instruction.

24 Q. How long had you had that role?

25 A. Two full years by now.

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Jiang - Direct

1 Q. What are your responsibilities as vice dean for curriculum
2 and instruction?

3 A. On a day-to-day basis we manage to make sure that the
4 courses are listed in the right time and in the right place.

5 In the immediate horizon, we monitor and review
6 teaching quality and the viability of the curriculum, and in
7 the longer horizon we also strategize our curriculum offerings
8 based on changing demand and new trends.

9 Q. Do you conduct research?

10 A. Yes, I do.

11 Q. Does your research focus on any particular subject matter?

12 A. Broadly finance, financial markets and more specifically
13 corporate governance and investments.

14 Q. Do you teach any courses at Columbia Business School?

15 A. Yes.

16 Q. What courses do you teach?

17 A. I have taught courses in corporate finance, corporate
18 governance, a immersion course in China, and also an
19 econometrics course in panel data.

20 Q. Have you ever had editorial positions at any journals?

21 A. Yes, I do. I am currently an editor at the Review of
22 Financial Studies. Previously I was an editor in Management
23 Science and also an associate editor at Review of Financial
24 Studies and Journal of Finance.

25 Q. What kind of things are published in those journals,

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Jiang - Direct

1 broadly speaking?

2 A. All these are called journal interest finance journals.

3 Basically any topic, broadly related to finance could
4 potentially be published, but they need to be novel in topic,
5 important for both theoretical and practical purposes, and also
6 have high execution standards.

7 Q. Are those journals highly regarded in your field?

8 A. Yes, they are.

9 Q. Are those journals peer reviewed?

10 A. All the journals I just mentioned are peer reviewed.

11 Q. What does it mean for a journal to be peer reviewed?

12 A. It means the fundamental assessment of the quality of a
13 paper that's submitted to the journal is reviewed usually by
14 two anonymous experts in the field.

15 So these experts are expected to submit their
16 objective assessment of the paper, and they should not have any
17 conflict of interest at the time. And the editorial decision
18 is heavily dependent on the input of those peer reviewers.

19 Q. Once the editor receives feedback from the peer reviewers,
20 what is the role of the editor?

21 A. The editor themselves would read the paper carefully and
22 then the editor would also look at the reports submitted by the
23 referees or the peer reviewers. Based on the editor's own
24 reading of the paper as well as the recommendations of the
25 referees, the editor will finally make an editorial decision.

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Jiang - Direct

1 Q. What do you mean by editorial decision?

2 A. So a decision could entail the following: The paper, in
3 most cases the paper will be rejected for publication or the
4 paper could be invited back for a revised -- what we call a
5 revise and resubmit, meaning the authors are asked to revise
6 the paper and then resubmit it, and the resubmission will be
7 sent out to the peer reviewers again to either be rejected or
8 convergence toward publication.

9 Q. Are there different types of reject and resubmits? Are
10 those also called R and Rs, first of all?

11 A. The revise and resubmit, we call them R and Rs.

12 Q. I'm sorry. Revise and resubmits.

13 A. Yes.

14 Q. Are there different kinds much revise and resubmits?

15 A. Yes. Revise and resubmits we oftentimes would classify
16 into three categories.

17 A strong revise and resubmit means that the editor is
18 quite confident that the revision will converge to publication
19 within sight.

20 A normal revise and resubmit means the paper needs
21 substantial work. The editor is reasonably optimistic that a
22 paper will converge toward publication, but the editor doesn't
23 feel they can promise anything.

24 And a weak revise and resubmit means the paper has
25 potential, but it's quite a speculative bet in terms of

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Jiang - Direct

1 editorial position and entails much higher likelihood of being
2 rejected in the later round than the regular revise and
3 resubmit or strong revise and resubmit.

4 Q. Who submits articles for publications in these finance
5 journals?

6 A. Basically researchers around the world. Most of them are
7 faculty members at research universities, but also there are a
8 lot of authors from think tanks, research units in government
9 agencies, or in financial institutions.

10 Q. To your understanding, why do journals such as these use
11 this peer review process?

12 A. Because the peer reviewers are experts in their field and
13 their opinions should be counted on to assess the
14 publishability of the manuscripts.

15 And the other reason is that this is for the objective
16 assessment, because these are anonymous reviewers. They're
17 expected to hand in their very candid opinion, so it is not a
18 personal opinion, but a very professional, objective opinion
19 exercised by the experts in the field.

20 Q. As a tenured professor at Columbia Business School, have
21 you participated in the process of preparing annual evaluations
22 for untenured faculty members?

23 A. Yes, I have.

24 Q. Can you please describe for us the annual review process
25 for evaluating untenured faculty.

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Jiang - Direct

1 A. Yes, each year, usually in the early spring, each untenured
2 faculty member, which we also call the junior faculty member,
3 we will assign, the division will assign one primary reader and
4 one secondary reader.

5 These two people will divide up the published and
6 working papers of this person under review, especially the new
7 work since last year's review. They will read this work very,
8 very carefully and then draft a preliminary letter to assess
9 whether the performance of the person is up to date and whether
10 the faculty member is on track for tenure to this moment.

11 And after that the division will have a meeting, and
12 all senior faculty members are expected to attend, and most of
13 them do. In the meeting, the primary reader will read the
14 drafted letter to all the faculty members, and there will be
15 questions asked, there will be deliberation, there will be
16 suggestions or additions.

17 And, based on a consensus of the resulting discussion,
18 the primary and the secondary readers will revise the review
19 letter and hand it in to the chair, and the chair will send the
20 revised letter to everybody, all the senior members, by e-mail,
21 see if anyone has suggestions, objections. This is the time
22 for you to raise those points.

23 And after collecting all -- any remaining opinions, if
24 any, then those reviewer letters will be put on file as well as
25 sent to the junior member so that the person being reviewed

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Jiang - Direct

1 knows how the senior members collectively think about their
2 progress.

3 Q. On that last point, what is the purpose of providing these
4 evaluations?

5 A. The top purpose is to provide a very candid feedback to the
6 junior faculty member about their professional progress,
7 especially research progress to this date, especially to give
8 them the candid feedback as to whether they are on track for
9 tenure up to this moment. And this is also information for
10 future reviews.

11 MS. FISCHER: Can we please pull up Exhibit BP, which
12 is in evidence.

13 BY MS. FISCHER:

14 Q. Professor Jiang, do you recognize this to be Professor
15 Ravina's spring 2013 evaluation?

16 A. Yes, I do.

17 Q. I would like to just focus your attention on the
18 introductory section at the very beginning.

19 It says -- the first sentence says, "Each year the
20 business school provides junior faculty members with an
21 assessment of their progress and future prospects as seen by
22 the tenured members of their division."

23 Is that consistent with your understanding of what the
24 purpose of these evaluations is?

25 A. Yes.

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Jiang - Direct

1 Q. And then down to the next paragraph it says to become --

2 MS. FISCHER: Below those numbers please.

3 BY MS. FISCHER:

4 Q. It says, "To become tenured at Columbia Business School a
5 candidate must demonstrate excellence in scholarship and an
6 outstanding record that is recognized in the field. The key
7 criteria are attaining a critical mass of high-quality
8 published papers in top journals and establishing a leadership
9 position and impact in a specifically defined field. This is
10 particularly important at Columbia, where the senior faculty is
11 required to consider the ranking of a junior faculty member in
12 the candidate's peer group."

13 Does this accurately describe what you believe to be a
14 part of the standard at Columbia?

15 A. Yes.

16 Q. You may have mentioned this Professor Jiang, but in
17 preparing evaluations would tenured faculty members who are
18 evaluating the junior faculty member look at how many
19 publications the junior faculty member had accomplished in the
20 past year?

21 A. Yes. We not only look at the publications and working
22 papers in the past year, but also cumulatively to this date.

23 Q. Does the number of publications someone has or a junior
24 faculty member has matter for the purposes of getting tenure at
25 Columbia Business School?

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Jiang - Direct

1 A. Yes.

2 Q. And why does the number of publications that someone has
3 matter for the purposes of getting tenure?

4 A. In order to be a recognized outstanding scholar in the
5 field -- which, as what you highlight here is a requirement for
6 tenure at Columbia Business School -- it is important that the
7 scholar publishes an adequate number of work. It's very
8 difficult for a very small number of papers to generate impact
9 needed for someone to be a recognized and leading figure in the
10 field.

11 Q. In addition to the number of publications that someone may
12 have, does it matter which journal the faculty member, the
13 junior faculty member gets their work published in?

14 A. Yes.

15 Q. Why?

16 A. Top journals are top journals because they publish the best
17 papers. On average they tend to publish the best papers that's
18 outstanding.

19 For all authors usually they would consider to submit
20 their best papers, the first choices to top journals, because
21 if you have a paper you first go for the top journal. Hence,
22 publishing in a top journal is a certification of the quality.

23 And, second, the top journals all have an extremely
24 rigorous referee and review process. So, during the review
25 process, the paper is usually substantially improved. So, when

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Jiang - Direct

1 the paper is published, not only is it a certification that it
2 was a good paper to start with, but also runs through a process
3 that has been dramatically improved.

4 And, finally, a top journal is a top journal because
5 its journals have high impact. So if a paper is published in a
6 top journal, it's more likely to have a wide readership. It is
7 more likely to be followed. It's more likely to be cited. So,
8 in order to have a great impact, it is best to publish in a top
9 journal.

10 Q. As a tenured faculty member in the finance and economics
11 division at Columbia Business School, did you participate in
12 the preparation of Professor Ravina's 2013 annual evaluation?

13 A. Yes. I attended a meeting when her review was discussed.

14 MS. FISCHER: And can we just pull up again Exhibit
15 BP. I would like to look at the second page, the section at
16 the bottom that says, "Summary."

17 It says, "While Enrichetta is working on many
18 promising projects, she has not published at a pace necessary
19 to be on track for tenure. Based on the current output and
20 pipeline, review prospects as tenure as unlikely. We do not
21 believe the promotion to untenured association is warranted at
22 this stage. The division will vote on her case to untenured
23 associate in spring 2014 and feels the likelihood of promotion
24 is low."

25 BY MS. FISCHER:

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Jiang - Direct

1 Q. First of all, what does untenured associate mean?

2 A. When a junior faculty joins Columbia they are called
3 assistant professor.

4 After they finish four years at Columbia, they will be
5 considered to be promoted to untenured associate professor. So
6 it is an advance in the rank, but it's still an untenured
7 position.

8 And then after their six full years of tenure track is
9 over, they will be considered to be for tenure review.

10 So it is an intermediate rank between assistant
11 professor, the first position, and a tenured position, and
12 usually it's a precursor of the likelihood of tenure.

13 Q. Did you ever speak with Professor Ravina about her tenure
14 prospects at Columbia Business School?

15 A. I remember after, after she received the --

16 MS. FISCHER: I'm sorry. Can we hold up a second.

17 THE COURT: Yes.

18 Q. I'm sorry. Go ahead.

19 A. OK. I recall that after she received the spring 2013
20 review, I cannot remember who sought out whom, but we met to
21 discuss the review she received.

22 Q. And what did you discuss with Professor Ravina in the
23 spring of 2013?

24 A. I basically repeated what was said in the last paragraph as
25 with the full report but with more elaboration.

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Jiang - Direct

I also gave her my candid view that the pace of her research productivity to the moment was slower than what is needed for tenure. Moreover, I encouraged her and I urged her to allocate more time and effort pushing the existing working papers to the finish line in addition to working on starting new projects.

Q. Did Professor Ravina have any explanation as to why she had not been able to get very many papers published up until that point?

A. So my recollection is that the two papers that were listed as rejected and resubmit or revise and resubmit were both pretty tough revision requests from those journals. There were major hurdles.

And the other aspect, it's quite common among researchers that we tend to be more excited about new projects rather than endure the drudgery of revising their old papers. So, when you see new projects, it's very easy to allocate your time to the new projects and be very reluctant to pushing the old ones to the finish line, because there have been many blocks and you have spent so much time on it already and you feel jaded about it. So I think that was the explanation.

Q. Did you participate in the preparation of Professor Ravina's 2014 evaluation?

A. Yes, I did.

MS. FISCHER: And can we pull up Exhibit DA. It is in

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Jiang - Direct

1 evidence. Let's look at page 2, 2 and 3. Thanks.

2 BY MS. FISCHER:

3 Q. In what way did you participate in the preparation of this
4 document?

5 A. I was the primary reader of that review.

6 Q. Did you draft this document?

7 A. I didn't draft the document you showed me. I drafted the
8 initial document for the full senior faculty discussion.

9 Q. And what did you do as the primary reviewer, primary reader
10 with respect to Professor Ravina's 2014 evaluation?

11 A. Together with the secondary reader, who is a colleague,
12 senior colleague, we read carefully all her finished working
13 papers as well as papers published in peer-reviewed journals to
14 assess those, the quantity, the quality, and the projected
15 impact.

16 Q. I would like to draw your attention to -- on page 171, No.
17 3.

18 MS. FISCHER: If we could just zoom in on that for a
19 moment, just at the bottom of that page.

20 BY MS. FISCHER:

21 Q. The first line says, "None of Enrichetta's papers has been
22 accepted for publication since 2009."

23 And now this review is in 2014.

24 What was the significance of her having no papers
25 accepted for publication since 2009?

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Jiang - Direct

1 A. So, just speaking from my experience, ever since I received
2 tenure, all the successful tenure cases I have seen have about
3 six or more publications in top journals. So that is for a
4 six-year tenure clock.

5 So, to get tenure at Columbia, on average you have to
6 move at a one-publication-per-year kind of pace. So, if
7 someone has not had anything move into publication from 2009 to
8 2014, that would require a very dramatic catch-up in order to
9 make the number we usually see.

10 Q. Looking at the sentence --

11 MS. FISCHER: If you can keep this up.

12 Q. -- that starts at the very bottom of the page, it says,
13 "However, according to" -- and then top of page 3 -- "the
14 editorial correspondences provided by Enrichetta the R & R
15 decision" -- here we go. This is with respect to the habit
16 formation paper.

17 "According to the editorial correspondences provided
18 by Enrichetta, the R & R decision was issued on July 21, 2008,
19 and was explicitly indicated by the editor as being a weak
20 one."

21 What are the editorial correspondences?

22 A. At the time when I was assigned to be the primary reader, I
23 was puzzled about the status of this paper because I have seen
24 this paper listed as revise and resubmit for many years.

25 So I requested the editorial letter by our

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Jiang - Direct

1 administration, department administrator. The purpose is for
2 all the senior faculty to take a look at the editorial letter
3 to see why, what are the major barriers for revising and
4 resubmitting the paper back to the journal as well as to see
5 whether we can help we can offer some suggestions given the
6 editorial feedback.

7 Q. Again, it says the R and R decision was explicitly
8 indicated by the editor as being a weak one.

9 What did you mean by a weak one.

10 A. In the letter the editor wrote this revise and resubmit
11 invitation is a very weak revise and resubmit.

12 So the original phrase was a very weak revise and
13 resubmit. That means the editor sees some potential in the
14 paper, but is not confident or optimistic that the revision
15 will work out. The editor encourages the authors to take up
16 the challenge, but will not promise any positive outcome.

17 Q. Let's look at the next paragraph.

18 'love & Loans, Effects of Beauty and Personal
19 Characteristics in Credit Markets was originally submitted in
20 2011 and received a reject and resubmit from the Journal of
21 Finance. Enrichetta has not resubmitted the paper, nor has she
22 indicated a target date for the submission.

23 "Similar to the paper discussed above, the topic and
24 data source were novel when Enrichetta first wrote the paper,
25 but the competitive edge has deteriorated rapidly during the

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Jiang - Direct

1 past few years, given a large volume of papers emerging using
2 the Prosper.com data. Moreover, two newly published papers by
3 Duarte, Siegel and Young and Pope and Sydnor have somewhat
4 overshadowed the contribution of Enrichetta's paper."

5 Can you explain what was being expressed in this
6 paragraph?

7 A. The paper in my own view was a very nice paper when it was
8 written. It got into highly selective conferences.

9 However, because of the delay in sending the paper to
10 the journals and the competition of other -- by other authors
11 with a similar data and a similar paper, by the time when we
12 wrote this review, the novelty of Professor Ravina's paper
13 already wore off and the prospect of that paper being published
14 would be low because similar papers reaching similar inferences
15 already had been published.

16 Q. Going down now to the second to last paragraph on this
17 page, it says, "Enrichetta submitted three working papers that
18 are in a preliminary or highly preliminary stage."

19 And then, looking a couple of sentences down, it
20 refers to the "Portfolios and Financial Decisions of High
21 Net-Worth U.S. Households, with Luis Viceira and Ingo Walter."

22 "This is the first empirical study on the investment
23 decisions made by wealthy households in the U.S. based on a
24 confidential dataset from a private service company. The
25 current draft is mostly descriptive, providing many interesting

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Jiang - Direct

1 and novel evidence; however, top journals will likely demand
2 more analytics. The paper has potential, and Enrichetta should
3 make an effort into completing it."

4 Q. What were you trying to express there?

5 A. So there are two issues.

6 One is that the working paper that we reviewed was
7 very preliminary in the sense there are several places just
8 with blanks to be completed and filled in, and certain parts,
9 the references etc., were not complete. So we urged Professor
10 Ravina to try to speed it up and make it into complete working
11 paper.

12 And the second feedback is that the draft we reviewed
13 mostly described the reality. Basically, the draft shows how
14 many people there are on average, how old they are, how much
15 money they have, how they allocate their money. So this is
16 what we called a descriptive analysis.

17 Now, the top journals welcome those descriptive
18 analyses, but will definitely require more what we call
19 analytical outcomes, meaning you have to pose your own
20 hypothesis. What do you expect to find? Why do you expect to
21 find this? What kind of theory would motivate your analysis?

22 And, once you find some outcome, you reconcile with
23 your hypothesis. If they're consistent, you argue whether this
24 is a causal inference. If they're not consistent, how would
25 you justify reconciling. This is what we call analytical

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Jiang - Direct

1 analysis.

2 Q. Now can we look at the next page of this review, the
3 summary section, the next page.

4 The summary section here says that, "Enrichetta's
5 working papers are at various stages. Her more recent work
6 appears to be promising. She needs to bring her projects to
7 fruition, acceptance for publication preferably at selective
8 and high impact outlets.

9 "unfortunately the paucity of publications renders
10 Enrichetta's tenure prospects dim. The division believes her
11 output does not justify a promotion to untenured associate
12 professor. The division will vote on Enrichetta's tenure in
13 spring 2015. A positive outcome is very unlikely."

14 Professor Jiang, whose views are expressed in this
15 summary section?

16 A. So, this is the consensus view from --

17 MR. MCKNIGHT: Objection, your Honor. Hearsay.

18 THE COURT: I will allow it. You can answer.

19 A. This is a consensus view from the senior faculty meeting.

20 Q. Professor Jiang, are you familiar with the term reading
21 committee as it relates to the tenure review process at
22 Columbia Business School?

23 A. Yes, I am.

24 Q. Have you ever sat on a reading committee?

25 A. Yes.

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Jiang - Direct

1 Q. How many times have you sat on a reading committee?

2 A. I think so far four.

3 Q. What is a reading committee?

4 A. A reading committee is a starting point of a tenure review
5 process.

6 So, when a junior faculty member is put up for tenure
7 review, a committee is formed by the division chair in
8 consultation with the senior vice dean.

9 So, the reading committee usually consists of four
10 senior faculty members reasonably close to the research field
11 of the candidate. And the reading committee will divide up all
12 the published papers in peer-reviewed journals and finished
13 working papers and read them very carefully to assess the
14 quality.

15 The reading committee will also compose all the
16 objective and quantifiable metrics, such as number of
17 publications in top journals, the number of publications in
18 peer-reviewed journals, the number of citations by the
19 published papers, the number of citations by all papers
20 outstanding right there.

21 And then the reading committee will make a
22 recommendation to the full tenure committee -- I'm sorry,
23 tenured faculty members within a division.

24 Then there will be a meeting of all tenured members of
25 the division. At that meeting the chair of the reading

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Jiang - Direct

1 committee will make a presentation to all the senior members.

2 At the end, the reading committee will make a recommendation,
3 and then there will be discussions and deliberations of all the
4 senior faculty members present at the meeting.

5 Q. And who selects the members of the reading committee?

6 A. It's appointed by the chair of the division, but it's also
7 in consultation with the senior vice dean.

8 Q. I think you may have touched on this, but what does the
9 chair of the reading committee do?

10 A. The chair of the reading committee will assign the tasks to
11 all the reading -- the committee members, mainly to divide up
12 all the papers so that each person can read the assigned paper
13 in great depth.

14 The chair will also assemble various meetings to
15 discuss the matter within a committee.

16 And, finally, the chair will make the presentation to
17 the full senior faculty members at the later meeting.

18 Q. Are all of the members of the reading committee supposed to
19 read all of the candidates' papers that are submitted?

20 A. Yes, they do, and they will read their own assigned paper
21 in greater depth.

22 Q. Were you asked to chair the reading committee that was
23 tasked with evaluating Professor Ravina's tenure case?

24 A. Yes, I was.

25 MS. FISCHER: Can we pull up Exhibit NC.

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Jiang - Direct

1 Q. Professor Jiang, is this an e-mail communication between
2 yourself, Stephen Zeldes, and others?

3 A. Yes.

4 MS. FISCHER: We offer NY.

5 MR. MCKNIGHT: No objection, your Honor.

6 THE COURT: NY will be admitted.

7 (Defendants' Exhibit NY received in evidence)

8 BY MS. FISCHER:

9 Q. Professor Jiang, who asked you to sit on the reading
10 committee concerning Professor Ravina's tenure case?

11 A. That's professor Steve Zeldes. He was the chair of the
12 division at the time.

13 Q. And who else was on the reading committee that reviewed
14 Professor Ravina's tenure case?

15 A. Professor Daniel Wolfenzon, Professor Emi Nakamura and
16 Professor Gur Huberman.

17 Q. Do you have any sense of why you were selected for her
18 reading committee?

19 A. I think I'm if not the most, certainly one of the most
20 closest in Professor Ravina's research field among our senior
21 faculty members.

22 Q. What did the reading committee do to assess Professor
23 Ravina tenure case?

24 A. We all read her various papers, and the person who assigned
25 those papers would elaborate more why this paper is of certain

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Jiang - Direct

1 quality and whether this paper would generate what kind of
2 impact.

3 And then we will, the committee, work together to
4 compose all the metrics and evaluations of Professor Ravina's
5 research activity, teaching records, professional visibility,
6 professional service, as well as service within the school.

7 And, finally, we provided that presentation material
8 that includes all this information.

9 MS. FISCHER: Can we please pull up SQ. It's in
10 evidence.

11 BY MS. FISCHER:

12 Q. Professor Jiang, do you recognize this to be Professor
13 Ravina's CV?

14 A. Yes, I do.

15 Q. And if we look at page 5, there's a date on it.

16 MS. FISCHER: Show the witness.

17 Q. Do you see at the bottom there it says, "Last updated April
18 2016"?

19 A. Yes.

20 Q. So, do you recognize this to be the CV that was current as
21 of the time of Professor Ravina's vote and consideration?

22 A. Do you mind going to the published -- there was one paper
23 published last minute. I wanted to make sure it was there.

24 Q. Sure. So let's look at page 2. Would you like a hard
25 copy?

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Jiang - Direct

1 A. OK. So that's the most updated, because the first
2 publication was the last-minute publication that we updated.

3 Q. All right. So let's go through those publications.

4 Under "Published, Accepted, and Forthcoming," the
5 first item listed there is "Who is Internationally
6 Diversified," which says that it was accepted in the Journal of
7 Financial Economics in April 2016.

8 Is the Journal of Financial Economics a peer-reviewed
9 publication?

10 A. Yes, it is.

11 Q. Is it considered a top publication?

12 A. Yes, it is one of the three top journals in finance.

13 Q. And what did you think about this paper? What was your
14 assessment of this paper?

15 A. So, the assessment of the paper was that the paper was
16 competently executed. The database was new. It was the first
17 one -- they were the first one to analyze this particular
18 database.

19 And, also, for 401(k) plan research, this is one of
20 the largest and most comprehensive and most detailed database
21 to date on the topic.

22 On the research topic side, we do not view the
23 research question to be particularly novel because
24 international diversification, there have been many, many
25 attempts. However, there's value for this study to look at a

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Jiang - Direct

1 newer and better data to visit those questions with competent
2 execution.

3 Q. And, as noted here on this CV, it says that this paper was
4 accepted for publication as of this time April 2016, but not
5 yet published. Is that taken into account in the tenure review
6 process?

7 A. We actually consider this paper to be published.

8 Q. The next paper listed says "Risk Aversion and Wealth,"
9 which was published in Management Science in February 2016.

10 Is that a peer-reviewed publication?

11 A. Yes, it is.

12 Q. And is that considered a top journal?

13 A. It is not one of the top three journals that we usually
14 consider as the top, but it is a very, very respected journal
15 in our profession.

16 Q. And what was your assessment of this paper?

17 A. Our assessment is that, again, it's a very careful
18 execution, but it's not a new research question. So this is
19 why we suspect this was the reason why the paper was not
20 accepted in one of the top journals as they tried.

21 Q. The next paper listed here says "What Do Independent
22 Directors Know" in the Review of Financial Studies, October
23 2010.

24 Is that a peer-reviewed publication?

25 A. Yes, it is.

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Jiang - Direct

1 Q. Is that a top publication?

2 A. Yes, it is.

3 Q. And what was your assessment of this paper?

4 A. We all think it's a great paper and also quite impactful
5 paper. It's one of the first to analyze whether the
6 independent directors would trade on their private information
7 because they serve on the board. That is a provocative idea.
8 So it's a very fine paper.

9 Q. And then the next paper listed underneath says, "Increasing
10 Income Inequality" in the American Economic Review, P & P, May
11 2007.

12 Is that a peer-reviewed article or peer-reviewed
13 publication?

14 A. No, this is not a peer-reviewed publication.

15 Q. In light of that, was this paper given consideration in
16 Professor Ravina's tenure review process?

17 A. So P & P meaning papers and proceedings. So this is
18 invited by the conference organizer after conference was held.
19 So the organizer invited some papers to put in a conference
20 proceedings.

21 Because this is not a peer-reviewed journal, we did
22 not give it too much weight, but we certainly took it into
23 consideration as a general -- it is a broad research portfolio,
24 but we did not give it too much weight.

25 Q. Looking now at the next section with the heading "Working

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Jiang - Direct

1 Papers."

2 What consideration did the reading committee give to
3 the working papers, if any?4 A. We always look at finished working papers. So the purpose
5 of looking at finished working papers is to assess the
6 potential to be published preferably in top journals.7 Now, we did read the first two papers listed in this
8 section of the CV, but for reasons that were stated in the 2014
9 annual review, we did not think that there's much potential or
10 possibility for these two papers to eventually be published in
11 top journals, and that was our consensus assessment.12 And then the third paper was quite preliminary. It
13 listed a draft available upon request.14 So after we requested, we did obtain the draft, but it
15 was not a polished, finished working paper.

16 And the fourth one was not a finished working paper.

17 MS. FISCHER: Can we pull up Exhibit PT.

18 BY MS. FISCHER:

19 Q. Professor Jiang, do you recognize this as a communication
20 between yourself and Katherine Phillips?

21 A. Yes.

22 MS. FISCHER: We offer PT.

23 THE COURT: Any objection.

24 MR. MCKNIGHT: No, your Honor.

25 THE COURT: PT will be admitted.

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Jiang - Direct

1 (Defendants' Exhibit PT received in evidence)

2 BY MS. FISCHER:

3 Q. Looking at the e-mail the first in the chain, so I guess
4 the bottom on that page, you wrote, "Kathy," to Kathy Phillips?

5 A. Yes.

6 Q. "The following was stated on Ravina's 2012 FAR (filed in
7 2013)."

8 What is an FAR?

9 A. It's the faculty annual review.

10 Q. And it references the Love & Loans paper?

11 A. Yes.

12 Q. And then it says about halfway through, that in the
13 meantime, two other very similar papers written later and based
14 on my work -- I guess Professor Ravina's work -- have been
15 published.

16 And then what was your question concerning this paper?

17 A. So my question was, because it has a reject and resubmit,
18 but there's no update after the initial reject and resubmit, so
19 I just want to know what is the status at the time, that we
20 need to discuss the case.

21 Q. And what did you understand as to the status?

22 A. My understanding was still reject and resubmit without
23 being resubmitted.

24 Q. Let's go back to SQ, page 2.

25 In that same section on papers, at the bottom, it says

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Jiang - Direct

1 "Other Papers."

2 And there's a reference to publication in Rivista di
3 Politica Economica in 2011.

4 What consideration, if any, did you give to this
5 paper?

6 A. So we did Google the journal and couldn't find any English
7 investigation of it. So none of the committee members knew
8 Italian. But then we looked at the citation of this paper, and
9 found the citation to be zero. So we decided not to put a lot
10 of weight on this publication that's not in the
11 English-language journal and not a journal any of us is aware
12 of.

13 Q. So, to be clear, how many peer-reviewed papers did
14 Professor Ravina have at the time of her tenure review?

15 A. I think it's three.

16 Q. What was the reading committee's assessment as to the
17 quantity of papers that Professor Ravina had gotten published
18 or accepted for publication at that time?

19 A. We considered it to be significantly below what we expect
20 to be a successful tenure case at Columbia Business School.

21 Q. Did you, as I think you described previously in discussing
22 the process and the reading committee's role, did you compare
23 the number of papers that Professor Ravina had published or
24 accepted for publication to the number of papers that other
25 scholars had published at other schools?

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Jiang - Direct

1 A. Yes, we did.

2 Q. And in the normal course, how would you decide who to
3 compare a tenure candidate to?

4 A. So we will form a peer group from the same cohort.

5 So it has to satisfy the following criteria:

6 One is that the peer is from a peer school, meaning
7 the leading business schools around the world; and,

8 Second, the peer has to be in the same or closely
9 related to research field as the candidate; and,

10 Third, the peer receives his or her Ph.D. from three
11 years ahead to one year below, so basically roughly on the
12 five-year period from three years ahead to one year behind.
13 So, anyone who got a Ph.D. from that five-year time period
14 relative to the candidate's Ph.D. year in a closely related
15 research field and currently already has tenure at a peer
16 school.

17 Q. Did the process that the reading committee used in
18 evaluating Professor Ravina follow that exact guideline that
19 you just described?

20 A. No. We made some adjustments.

21 Q. So tell us about those adjustments.

22 A. When the reading committee started its work, all the
23 faculty members already got informed that there was a conflict
24 between the two colleagues of ours. There was an allegation of
25 a very serious situation.

I7nnrav2

Jiang - Direct

1 We, the reading committee, felt we were not able to
2 take a stance because we cannot assume that allegations were
3 true, and we cannot dismiss the allegations either. But we
4 think that if the allegations were true, then Professor Ravina
5 effectively lost two years of time in her research activity,
6 and we would like to adjust for that.

7 So for this reason in the peer group we assembled half
8 of the -- about half or more than half the members would get
9 their Ph.D. two years to three years behind Professor Ravina,
10 to adjust for the fact that she might have lost two years
11 because of the allegation -- alleged situation.

12 MS. FISCHER: Can we pull up Exhibit NV.

13 BY MS. FISCHER:

14 Q. Professor Jiang, do you recognize this as an e-mail that
15 you sent --

16 A. Yes.

17 Q. -- to Steve Zeldes and Charles Jones?

18 A. Yes.

19 MS. FISCHER: We offer NV.

20 THE COURT: Any objection.

21 MR. MCKNIGHT: No objection.

22 THE COURT: All right.

23 NV will be admitted.

24 (Defendants' Exhibit NV received in evidence)

25 BY MS. FISCHER:

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Jiang - Direct

1 Q. Can you please -- Professor Jiang, what you were asking
2 Professor Zeldes and Jones in this e-mail.

3 A. So. In this e-mail you see mathematic notations, T minus 3
4 to T plus 1. That is the usual rule. T minus 3 meaning the
5 peer would be graduating three years ahead, and plus one
6 meaning one year behind look adding one more year.

7 That was the normal procedure.

8 I was seeking clarification from both Professor Zeldes
9 and Professor Jones to see whether we should make an adjustment
10 to the time frame based on what we heard about the allegation.

11 Q. What was professor Jones' role at that time?

12 A. Professor Jones was the chair of the finance subdivision.

13 MS. FISCHER: Can we pull up Exhibit PC.

14 BY MS. PLEVAN:

15 Q. Professor Jiang, do you recognize this to be an e-mail that
16 you sent to Stephen Zeldes, Charles Jones, and Marina
17 Tourevski?

18 A. Yes.

19 MS. FISCHER: We offer PC.

20 THE COURT: Any objection?

21 MR. MCKNIGHT: No objection.

22 THE COURT: PC will be admitted.

23 (Defendant's Exhibit PC received in evidence)

24 BY MS. FISCHER:

25 Q. Who is Marina Tourevski?

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Jiang - Direct

1 A. She was the department administrator at the time.

2 Q. You wrote here that this was an updated list. "I added two
3 names from 2008. There is nobody in 2009 we checked."

4 Now let's just look quickly at the attachment.

5 Professor Jiang, can you explain what this e-mail is
6 about?

7 A. So, this e-mail informs the leaders of the division that
8 the reading committee has come up with a peer list for
9 Professor Ravina. These peers, they all work, as you look at
10 their affiliations, they all work at leading business schools
11 around the world, what we consider to be our peer schools, and
12 they are all working in a very closely related field,
13 especially investments and individual investment behavior.

14 And they got a Ph.D. for various years.

15 Q. So Professor Ravina got her Ph.D. in 2005?

16 A. 2005.

17 Q. So here you have people who received their Ph.D. two years
18 before her, 2003?

19 A. Yes. Because we usually consider three years ahead to one
20 year behind. So this one is our normal range.

21 Q. And then you have 2006, '7, '8, which is one two and three
22 years behind her?

23 A. Yes.

24 Q. And then 2012?

25 A. Yes. Because that scholar works in the individual

I7nnrav2

Jiang - Direct

1 investing, that's the closest in terms of database research
2 question, closest to Professor Ravina's research.

3 Q. Did you prepare a presentation for use at Professor
4 Ravina's tenure review meeting?

5 A. It's the reading committee's joint work.

6 MS. FISCHER: Can we pull up QD.

7 THE WITNESS: Thank you.

8 BY MS. FISCHER:

9 Q. Professor Jiang, is this the PowerPoint presentation that
10 the reading committee prepared?

11 A. Yes.

12 MS. FISCHER: We offer QD.

13 THE COURT: Any objection.

14 MR. McKNIGHT: No objection.

15 THE COURT: QD will be admitted.

16 (Defendants' Exhibit QD received in evidence)

17 MS. FISCHER: Let's turn to page 3.

18 BY MS. FISCHER:

19 Q. Is this the peer comparison that you prepared?

20 A. The reading committee prepared together.

21 Q. I'm sorry, that the reading committee prepared.

22 Can you please explain what we're looking at on this
23 page.

24 A. So the first column lists all the names of all scholars
25 that form the peer group.

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Jiang - Direct

1 The second column listed where they are, so they are
2 all from other leading business schools.

3 And the third column lists the institutions where
4 these people got their Ph.D., mostly our peer institutions.

5 And the fourth column is a Ph.D. year.

6 The fifth column is a number of publications in top
7 journals, and we call them "A" journals.

8 So the top journals, there were eight that we list as
9 the top journals, there are three top finance journals, and the
10 five top economics journals, so any of those eight would count.

11 And total publications is a number of publications in
12 any peer-reviewed publications.

13 And then the Google cites is, there is a Google,
14 called scholar, Google scholar that will track how many cites
15 each of your papers receives, and we just added up for each
16 paper for each person.

17 And, finally, is your best, most impactful paper, how
18 much citation the paper has received. So, this is indications,
19 suppose you have a home run, how big a home run that is.

20 Q. When you compared Professor Ravina, who got her Ph.D. in
21 2005, to people who got their Ph.D.'s two years after she did
22 how did she compare in terms of the number of publications?

23 A. It's considerably behind.

24 Q. And when you compared Professor Ravina who people who got
25 their Ph.D.'s in 2008, three years after she did, how did she

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Jiang - Direct

1 compare in terms of the numbers of publications?

2 A. Considerably behind.

3 Q. Did you draw any conclusions from these comparisons?

4 A. Our conclusion is that the productivity, the total
5 productivity of quantity of research is substantially behind
6 the peer group.

7 (Continued on next page)

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I7N3RAV3

Jiang - Direct

1 Q. Did the reading committee also, in addition to the numbers
2 that we're looking at, did the reading committee assess the
3 quality of Professor Ravina's work?

4 A. Yes, we did.

5 Q. What was that assessment?

6 A. So the assessment is most qualitative as well as
7 quantitative. So the qualitative one is that the overall
8 conclusion is that the quality of the paper is not, they are
9 good papers, the published papers are very good papers, but
10 they're not so outstanding as to compensate the variable
11 quantity. And from objective perspective, we look at the
12 citations of those papers, and also find that those papers are
13 not highly cited relative to the peers.

14 Q. Did the reading committee meet to discuss Professor
15 Ravina's tenure case?

16 A. Yes, we did.

17 Q. About how many times did the reading committee meet?

18 A. At least three times.

19 Q. I'm sorry?

20 A. At least three times.

21 Q. What was discussed at those meetings?

22 A. We discussed which peer to choose, because in lot of
23 scholars out there, so this list was the result of a
24 discussion. Then we discussed paper by paper, starting from
25 the primary reader, with then a general discussion among the

I7N3RAV3

Jiang - Direct

1 four of us, and then we composed all the quantitative metrics
2 again to form our overall view as well as recommendation.

3 Q. Did you think Professor Ravina had improved enough from her
4 2014 review to deserve tenure in 2016?

5 A. There was one, so one additional publication in a top
6 journal, and also one additional publication in a not a top but
7 a well-respected leading, leading journal.

8 But even with the combined number we think both the
9 number and overall impact do not come above the bar for tenure
10 at Columbia Business School.

11 Q. Did Professor Bekaert provide any input into the reading
12 committee's decision?

13 A. No. He never reached out to us; we never reached out to
14 him.

15 Q. Did Bob Hodrick ever provide any input into the reading
16 committee's assessment?

17 A. No. The reading committee did our work. We never heard
18 from Professor Hodrick.

19 Q. Did you attend the meeting of the Finance and Economic
20 Division when Professor Ravina's tenure case was voted on?

21 A. Yes, I did.

22 Q. What happened at that meeting?

23 A. It started with, I made the presentation based on the
24 PowerPoint that we have all seen now. After the presentation,
25 there were some discussions and questions. The session was

I7N3RAV3

Jiang - Direct

1 relatively short, based on my experience of other cases. And
2 then there was a voting, based on using secret ballot.

3 Q. So just to back up for a moment. Did you present this
4 PowerPoint that we're looking at?

5 A. Yes, I did.

6 Q. Were her papers discussed?

7 A. Yes, her paper was -- all the completed papers were
8 discussed one by one by the reading committee.

9 Q. Was there discussion about the quantity of Professor
10 Ravina's publications as compared to others?

11 A. Yes.

12 Q. As reflected in this chart?

13 A. Yes.

14 Q. Did the reading committee make a recommendation at the end
15 of the meeting?

16 A. Yes, we did.

17 Q. What was the recommendation that was made?

18 A. The recommendation that her, the quantity, quality, and
19 impact of her research did not warrant to proceed her tenure
20 case to the next step.

21 Q. Was a vote taken?

22 A. The vote was taken.

23 Q. Can you describe the process by which ballots are taken.

24 A. After the presentation, after some discussion, there is
25 something called a question, it was seconded, and there was a

I7N3RAV3

Jiang - Direct

1 secret ballot and we each vote on the ballot that we are given,
2 whether you vote in favor of going forward, you would have a
3 negative vote, or you abstain.

4 Q. That's done privately?

5 A. That's done privately. Like I would not know the votes
6 casted by my colleague on the spot.

7 Q. Are you aware of whether the divisional vote was positive
8 or negative?

9 A. I did not know at the time. But later on, I was informed
10 of the outcome.

11 Q. Do you know whether it was positive or negative?

12 A. I was learned Professor Ravina's voting outcome was
13 negative.

14 MS. FISCHER: Thank you. Nothing further.

15 THE COURT: All right. Why don't we take our
16 afternoon break now and then come back in 10 minutes. Thank
17 you.

18 (Jury excused)

19 (Continued on next page)

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I7N3RAV3

1 THE COURT: Do we need to talk about any additional
2 exhibits?

3 MR. MCKNIGHT: No, your Honor, I don't think so.

4 THE COURT: How are we doing on timing? When do you
5 anticipate --

6 MS. FISCHER: This is our last witness.

7 THE COURT: Okay. Thank you.

8 (Recess)

9 THE COURT: Are we ready for the jury?

10 (Continued on next page)

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I7N3RAV3

Jiang - Cross

1 (Jury present)

2 MR. McKNIGHT: May I proceed, your Honor?

3 THE COURT: Yes, of course.

4 MR. McKNIGHT: Thank you.

5 CROSS-EXAMINATION

6 BY MR. McKNIGHT:

7 Q. Good afternoon, Professor, how are you?

8 A. Good afternoon.

9 Q. Good. In evaluating Professor Ravina's tenured candidacy,
10 the reading committee examined Professor Ravina's publication
11 record as it stood at the time of your review; isn't that
12 correct?

13 A. Yes, it's correct.

14 Q. One of the ways that you did that was to compare Professor
15 Ravina's publication and citation counts to those of other
16 scholars; is that correct?

17 A. Yes. Not any scholar, but the peer scholars.

18 Q. As part of this comparison, you compared Professor Ravina
19 to a number of scholars that you designated as superstars,
20 correct?

21 A. Not me, the reading committee.

22 Q. All right. But you participated in selecting the person
23 that you designated as a superstar.

24 A. Yes, I did.

25 Q. Isn't it true that you asked Division Chair Zeldes if

I7N3RAV3

Jiang - Cross

1 anyone on the reading committee should seek Professor Ravina's
2 input regarding the scholars to be selected for the peer list?

3 A. No, I didn't ask for that.

4 Q. Could I have Defendant's Exhibit NV, please. I believe
5 it's already in evidence.

6 Professor Wei, I direct your attention to that section
7 where you say "my questions are." Do you see that?

8 MR. MCKNIGHT: Mr. McLeod, could you blow that up for
9 us.

10 Q. Do you see number two there? "Should any of us seek the
11 input from, but not the decision of, the candidate regarding
12 the peers, with the condition that the peers must be tenured at
13 our peer schools working in related fields?"

14 Do you see that?

15 A. Okay, yes, I see that.

16 Q. The candidate in that particular question would be
17 Professor Ravina, correct?

18 A. Yes, correct.

19 Q. Did you in fact seek her input about the selection of the
20 peers?

21 A. I don't recall.

22 Q. In the weeks leading up to Professor Ravina's tenure vote,
23 you added a comparator who was characterized as a superstar of
24 the next generation to Professor Ravina's peer list; isn't that
25 correct?

I7N3RAV3

Jiang - Cross

1 A. Yes.

2 Q. Isn't it a fact that the reading committee prepared a final
3 comparison list for Professor Ravina that only included two
4 women?

5 A. We didn't -- we just only look at the merit of the
6 scholarship. We did not specify the gender in forming the
7 opinion.

8 Q. But the final list only included two women. Their names
9 are Victoria Ivashina and Adele Morris; isn't that correct?

10 A. Yes.

11 Q. Isn't it a fact that your final comparison list for
12 Professor Ravina included nine men?

13 A. I don't have exact math, but I trust your math. There are
14 only two women there, yes.

15 Q. Now, isn't it true that, as far as you know, no one on the
16 entire comparison list that you used had ever alleged that a
17 senior male faculty member had impeded the progress of their
18 work?

19 A. We are not aware of any allegations of such.

20 Q. Isn't it true that, as far as you know, no one on your
21 final comparison list alleged that the progress of his or her
22 work had been delayed by senior professors, gender
23 discrimination, or sexual harassment?

24 MS. FISCHER: Objection.

25 THE COURT: Overruled. You can answer.

I7N3RAV3

Jiang - Cross

1 A. We are not aware of any.

2 Q. Isn't it true that, as far as you know, no one on your
3 final comparison list alleged that the progress of his or her
4 work had been delayed by a senior professor's retaliation?

5 A. Not any, anyone we are aware of.

6 Q. Were you aware that Professor Bekaert had projected that
7 the joint research project with Professor Ravina could have
8 produced as many as six papers?

9 MS. FISCHER: Objection. Beyond the scope.

10 THE COURT: I'll allow it.

11 MR. HERNSTADT: And also no foundation.

12 THE COURT: I mean --

13 MR. HERNSTADT: It's a hypothetical.

14 THE COURT: Why don't you rephrase that.

15 MR. MCKNIGHT: All right.

16 Q. You testified earlier that you served on the faculty review
17 committee, correct, and that participated in her annual faculty
18 reviews?

19 A. Which, which year?

20 Q. In I believe 2013 and 2014 was your testimony today,
21 correct?

22 A. 2013 I participate as a regular senior faculty member. In
23 2014, I was one of the primary readers.

24 Q. In that capacity, did you review some of the joint projects
25 that she was working on with Professor Bekaert at that time?

I7N3RAV3

Jiang - Cross

1 A. It was very, very preliminary. It's too preliminary to
2 assess the eventual fruition.

3 Q. At the time that you became aware of information about the
4 joint projects that Professor Bekaert was working on with
5 Professor Ravina, at any time, did you learn that there was a
6 projection that this work might produce anywhere between four
7 and six papers?

8 A. I think that's very optimistic projection.

9 Q. I'm just asking whether you were aware of that. That's
10 all.

11 MS. FISCHER: Objection.

12 A. I was not aware.

13 THE COURT: Overruled.

14 A. I was not aware there would be four to six papers.

15 Q. Okay. Thank you.

16 THE COURT: Ladies and gentlemen, I want to make clear
17 that a lawyer's question isn't evidence. The answer that the
18 witness gives is evidence. So if there is a question, you just
19 think about the answer and not the question in and of itself.

20 You may proceed.

21 MR. MCKNIGHT: Thank you, your Honor.

22 Q. Before you served as the chair of Professor Ravina's
23 reading committee, you were aware of Professor Ravina's
24 allegations against Professor Bekaert; were you not?

25 A. Yes, I was.

I7N3RAV3

Jiang - Cross

1 Q. At some point in time, did you become aware of a petition
2 for Columbia Business School to adopt a policy concerning
3 research collaboration between senior and junior faculty
4 members?

5 A. Yes, I am aware.

6 Q. At the time, you supported that petition; did you not?

7 A. Yes, I did.

8 Q. That policy was not adopted, was it?

9 A. I was not a decisionmaker on that.

10 Q. I understand that. But do you have any knowledge of
11 whether that policy that you supported was eventually adopted?

12 A. My impression was not adopted.

13 Q. Thank you. In your role as chair of the reading committee,
14 isn't it true that you felt that your job was to focus on what
15 you called the objective assessment of Professor Ravina's
16 academic merit and to avoid potential influences by
17 non-academic factors, correct?

18 A. Could you repeat again? Sorry.

19 Q. In your role as chair of the reading committee for
20 Professor Ravina, isn't it true that you felt that your job was
21 to focus on the objective assessment of Professor Ravina's
22 academic merit, and to avoid potential influences by
23 non-academic factors?

24 A. We assessed the merit of the research output of Professor
25 Ravina.

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Jiang - Cross

1 MR. McKNIGHT: Can I have Defendant's Exhibit PQ,
2 please. I don't recall if this has been admitted in evidence.

3 THE DEPUTY CLERK: It's on the screen.

4 MR. McKNIGHT: If it is on the screen, I want it off
5 the screen until I make sure.

6 THE COURT: Is there any objection to PQ, to the
7 extent it hasn't already been admitted?

8 MS. FISCHER: No objection.

9 THE COURT: PQ will be admitted.

10 (Defendant's Exhibit PQ received in evidence)

11 Q. Professor Wei, I direct your attention to the e-mail from
12 you to Stephen Zeldes dated April 11, 2016 at 9:27 p.m. And in
13 the paragraph that begins "And is tomorrow's meeting
14 mandatory." The second sentence there. "If my job is to
15 provide an objective assessment of the academic merit of the
16 case, should I be put in a situation to be potentially
17 influenced by non-academic factors."

18 Do you see that?

19 A. Yes, I do.

20 Q. When you wrote that, was it your belief that this was your
21 job, to objectively assess the academic merit of the case and
22 avoid being influenced by non-academic factors?

23 A. That was what I was told to do.

24 Q. Who told you to do that?

25 A. The chair of the division.

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Jiang - Cross

1 Q. Would that be Stephen Zeldes?

2 A. Yes.

3 Q. At the time that you were given the instruction to focus on
4 the objective assessment and avoid non-academic factors, did
5 you consider sexual harassment to be a non-academic factor?

6 A. Yes.

7 Q. At the time that you were given this instruction, did you
8 consider gender discrimination to be a non-academic factor?

9 MS. FISCHER: Objection.

10 THE COURT: I'll allow it. You can answer that.

11 A. We feel that we cannot take stance on the allegation. So
12 we did not consider these factors.

13 Q. All right. So you did not consider gender discrimination.

14 A. We could not take a stance whether gender discrimination
15 occurred or not.

16 Q. And at the time you considered retaliation to be a
17 non-academic factor. Isn't that true?

18 A. We couldn't take stance whether retaliation happened or
19 not.

20 Q. At the end of the day, you concluded that Professor
21 Ravina's work was less cited than at least one of the
22 superstars that you compared her to, correct?

23 A. Yes. So one of the superstars got PhD in much later year.

24 Q. All right. You weren't able to determine how much
25 Professor Ravina would have been able to publish, absent

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Jiang - Cross

1 Professor Bekaert's obstruction, were you?

2 A. Nobody can.

3 Q. So you cannot say how much Professor Ravina would have been
4 able to publish but for the obstruction, correct?

5 MR. HERNSTADT: Objection.

6 THE COURT: Again, those questions assume there is
7 obstruction, and I don't think the witness has answered that
8 way. So if you can rephrase that.

9 MR. McKNIGHT: All right, your Honor. I think that --

10 THE COURT: Just rephrase the question.

11 MR. McKNIGHT: Excuse me. I'll rephrase the question.

12 Q. At the time that you took charge of the chair of the
13 reading committee, you at least had some information about
14 allegations that were made by Professor Ravina about Professor
15 Bekaert, correct?

16 A. Yes.

17 MR. HERNSTADT: Objection.

18 THE COURT: Overruled.

19 Q. And at least part of those allegations involved an
20 allegation by Prof --

21 THE COURT: Could you rephrase your questions and add
22 in the word "alleged." I think that will take care of it,
23 okay.

24 MR. McKNIGHT: That's fine. I didn't know if you
25 wanted more.

I7N3RAV3

Jiang - Cross

1 THE COURT: Yes.

2 MR. MCKNIGHT: I'm happy to do it that way.

3 Q. So you cannot say then how much Professor Ravina would have
4 been able to publish but for Professor Bekaert's alleged
5 obstruction.

6 A. This is a counterfactual. So nobody will know what will
7 happen if something happened, did not happen. So I cannot form
8 a projection.

9 MR. MCKNIGHT: Thank you very much. I have nothing
10 further, your Honor.

11 THE COURT: Any redirect?

12 MS. FISCHER: Just one moment, please.

13 No further questions.

14 THE COURT: Okay. Thanks. You can step down. Thank
15 you.

16 (Witness excused)

17 (Continued on next page)

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I7N3RAV3

1 THE COURT: Do either of the defendants have any
2 additional witnesses?

3 MS. PLEVAN: Defendant Columbia rests, your Honor.

4 MR. HERNSTADT: Defendant Bekaert rests, your Honor.

5 THE COURT: Does plaintiff have a rebuttal case?

6 MR. SANFORD: No rebuttal, your Honor.

7 THE COURT: Thank you. All right.

8 So ladies and gentlemen, the portion of the trial
9 where you will hear evidence has been concluded at this time.
10 Tomorrow morning we'll have the closing statements of the
11 parties. So I think it just makes sense to adjourn for the day
12 and have you come tomorrow morning, and then you'll hear their
13 arguments arguing what they believe the evidence has shown in
14 this case.

15 Please remember, still keep an open mind. Don't yet
16 discuss the case. Don't do any research on the case. And you
17 are not in a position to really talk about or fully evaluate
18 the case until you've heard the closing arguments and my
19 instructions on the law. All right?

20 Thanks, and have a nice evening.

21 (Jury excused)

22 THE COURT: What I'd like to do now is hand out, I
23 assume you got the charge, draft of the charge. I'm sorry we
24 got it later to you than anticipated. I'm going to give you a
25 proposed draft of a verdict form.

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Charge Conference

1 Why don't we take just a few minutes so that you can
2 review that, and then we'll meet and have a conference charge.
3 Okay? Thanks.

4 (Recess)

5 THE COURT: Are you all ready to discuss the charge?
6 I'm happy to go through any objections you have. I've read
7 your letters and I'm happy to address the Columbia's vicarious
8 liability for an employee's retaliation under the New York City
9 Human Rights Law. So I'll address that first.

10 I think plaintiff is right here. The plain language
11 of the statute sets up a clear distinction between when
12 supervisory or managerial authority is required as opposed to
13 when it's not. And it is not required for Section 7's
14 retaliation provisions. The three cases cited by plaintiff
15 also support that interpretation. I don't think it weakens
16 their impact that the relevant employees in those cases may
17 have happened to also exercised managerial or supervisory
18 authority. The language in those cases doesn't seem to view
19 that as relevant, given that Section 13(a) of the statute
20 establishes vicarious liability based on the retaliatory
21 conduct of an employee or agent without the added supervisory
22 requirement of 13(b)(1). And I don't believe the defendants
23 have pointed to a case that holds otherwise.

24 Nor for reasons that I've stated at summary judgment
25 during trial, on your motion, am I persuaded that Columbia's

17N3RAV3

Charge Conference

1 argument that plaintiff has no viable retaliation claim against
2 Professor Bekaert. That's an issue I've determined is for the
3 jury. So I'm going to keep the instruction to the jury that if
4 it finds Professor Bekaert liable for retaliation, you must
5 also find Columbia liable as his employer.

6 I'm happy to consider any other objections that you
7 have to the draft instructions.

8 MR. MELZER: We do have a few objections and proposals
9 for revisions. A couple of language changes and a few
10 substantive issues.

11 On page three, on the role of the jury, we would
12 suggest, of course it's your Honor's discretion, to go from
13 "pass upon" to "evaluate."

14 On page nine --

15 THE COURT: That's on page three. The first line of
16 the first full paragraph.

17 MR. MELZER: Role of the jury. Page nine, in the
18 second-to-last paragraph, we would suggest changing "which
19 commends itself to your belief" to "you find believable."

20 (Continued on next page)

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Charge Conference

1 THE COURT: OK. Those are both fine.

2 MR. MELZER: On page 15, at the end of the second
3 paragraph, there's some stray language where it says "alleged
4 retaliatory conduct."

5 THE COURT: Sorry. That's a mistake.

6 MR. MELZER: Then the last paragraph on page 15 about
7 personality conflicts.

8 Our view is that that is a Title VII concept about
9 personality conflicts not being a basis for liability for
10 discrimination. There is a New York case that does state this
11 but it's from 2004. That's *Forest v. Jewish Guild for the*
12 *Blind*, 3 N.Y.3d 295, which is before the Restoration Act, and
13 all the new law on how the New York City Human Rights Law is
14 different from Title VII and the State Human Rights Act.

15 *Forest* considers the state law and the city claims
16 together and courts no longer do that since the Restoration
17 Act.

18 I would suggest that under the standard, the current
19 standard of liability for being treated less well in part based
20 on gender, a claim can arise from a personality conflict as
21 long as gender has some component in that conduct or behavior.

22 So we would suggest against that paragraph.

23 THE COURT: Point to the exact language you are
24 looking at.

25 MR. MELZER: The last paragraph on page 15.

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Charge Conference

1 "It is not enough for Professor Ravina to show that
2 she had a personal conflict with a coworker, that a coworker
3 disliked her or that" --

4 THE COURT: It says, "if those motives had nothing to
5 do with illegal discrimination." Right?

6 So, I mean, you are not saying that is enough if it's
7 not based on gender --

8 MR. MELZER: Right.

9 I am saying that it is not a necessary instruction
10 under the New York City Human Rights Law. Treating someone
11 less well in part can be based on a personality conflict where
12 gender is at play in some way.

13 THE COURT: What if I added if those motives had
14 nothing to do with gender or illegal discrimination?

15 MR. MELZER: That's fine, your Honor.

16 THE COURT: OK.

17 MR. MELZER: The next thing that we would --

18 MR. HERNSTADT: Your Honor, instead of had nothing to
19 do I think it would be better to say --

20 THE COURT: Based on?

21 MR. HERNSTADT: Because of. I believe that's what
22 most of the cases say.

23 MR. MELZER: Based in part.

24 MR. HERNSTADT: The statutes actually use the phrase
25 "because of" including *Mihalik* I believe, your Honor.

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Charge Conference

1 MR. MELZER: The case law says someone needs to be
2 treated less well only based in part on gender.

3 MR. HERNSTADT: Your Honor, that's not what this
4 provision here is. This sentence is talking about, it has to
5 be because of gender and a personality conflict is not enough.

6 All the contemporary cases say that, that it's the
7 plaintiff's obligation to show that at least in part it is a
8 because of gender.

9 THE COURT: So if I were to change "had nothing do
10 with" -- I am just going to read the phrase "or that a coworker
11 had ulterior motives for taking a particular action, if those
12 motives were due at least in part to gender or illegal
13 discrimination."

14 I just want to make sure I am not missing the "not,"
15 because it is a double negative.

16 "It is also not enough for Professor Ravina to show
17 that she had a personality conflict with a coworker, that a
18 coworker disliked her or that a coworker had ulterior motives
19 for taking a particular action, if those motives were not due
20 at least in part to gender or illegal discrimination."

21 MR. MELZER: To eliminate the double negative, can we
22 say "unless those were based at least in part on gender or
23 illegal discrimination"?

24 THE COURT: What about that? "Unless those motives
25 were due at least in part to gender or illegal discrimination"?

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1 MR. MELZER: That is fine with us.

2 MR. HERNSTADT: Your Honor?

3 THE COURT: Yes.

4 MR. HERNSTADT: Maybe it is easier to make two
5 sentences. Put a period after "the particular action" and then
6 say she must also prove that those motives were also based at
7 least in part on gender or because of gender.

8 MR. MELZER: I think it's suggesting too much about
9 what the plaintiff needs to prove.

10 MR. HERNSTADT: I think that's her obligation under
11 the law. She must show that there is a discriminatory animus
12 and that it is because at least in part because of gender.

13 THE COURT: I am just going to keep it as one
14 sentence. I know it is a little bit long. But it just ties
15 the concepts together directly.

16 All right. What is your next suggestion?

17 MR. MELZER: The next thing is on page 16 at the
18 bottom, after the sentence, "This is referred to in the law as
19 engaging in protected activity."

20 We would suggest an additional sentence: Protected
21 activity can consist of expressing disapproval of possible
22 discriminatory conduct or indicating that it is wrong, such as
23 by rejecting a harasser's sexual advances.

24 Our authority for that is *Mihalik v. Credit Agricole*
25 *Chevreux North American Inc.*, 715 F.3d 102 citing *Albunio v.*

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1 *City of New York*, 16 N.Y.3d 472 at 479. Opposing any practice
2 can consist of making clear disapproval of the discrimination,
3 by communicating in substance that she thought the treatment
4 was wrong. It can consist of rejecting sexual propositions,
5 that can communicate opposition to activity, denouncing sexual
6 propositions, and opposing discriminatory conduct by rejecting
7 sexual advances.

8 That comes up in *Mihalik* at 112 and 115.

9 THE COURT: I will take a look at *Mihalik*. If you
10 want to respond, feel free to do so.

11 MR. HERNSTADT: Yes, your Honor.

12 I would object to that, your Honor, because that's
13 their theory of the case. That's what they're trying to prove
14 here.

15 The testimony so far has been that there were no
16 advances. Only that Professor Ravina understood certain
17 conduct and certain things that were said to be advances.

18 The testimony is actually quite clear that Professor
19 Bekaert never said to her that he wanted anything to do with
20 her romantically or sexually.

21 MR. MELZER: It is clearly --

22 MR. HERNSTADT: May I finish?

23 THE COURT: One at a time.

24 MR. HERNSTADT: More importantly, it's citing case law
25 or it is putting in an instruction that which they have to

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1 prove.

2 I think that a simple explanation of what protected
3 activity is sufficient. I don't think it's disputed -- maybe
4 the timing of when Professor Ravina first complained about
5 sexual harassment is at issue, but not the fact that at some
6 point she complained of sexual harassment, and then
7 subsequently she filed a lawsuit.

8 That is not in dispute. I think a simple explanation
9 that doesn't get into descriptions of what they ultimately have
10 to prove is better.

11 MR. MELZER: We think this is a legal instruction that
12 clarifies what protected activity is in a way that might not be
13 obvious to the jury. It is particular to New York City Human
14 Rights Law.

15 Someone might not understand that protesting an
16 advance or rejecting an advance or saying that it's wrong to
17 the harasser is itself a form of protected activity.

18 A jury, you know, that -- excuse me -- that that is a
19 category of complaining about or opposing potentially unlawful
20 discriminatory behavior. Of course, we recognize that the
21 evidence in this case is disputed, and that's exactly what the
22 jury is going to determine. But it's useful to have a
23 description of what protected activity is when they are
24 determining and applying those facts.

25 MR. HERNSTADT: This is not a theory that has ever

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1 been raised before in this case. We've seen many different
2 iterations of what the plaintiff has alleged to be retaliation,
3 and this is not something that has ever come up. So I think to
4 put it in an instruction --

5 THE COURT: Is that right?

6 Has it not always been the plaintiff's theory that
7 Bekaert impeded her work because she rejected his advances or
8 his interest in her?

9 MR. HERNSTADT: I think the timing of that, though, is
10 in question.

11 THE COURT: Walk me through that.

12 MR. HERNSTADT: Well, it hasn't -- I mean, your Honor,
13 you're correct, but that was always part of the discrimination
14 case. It was never part of the retaliation case.

15 The retaliation case has always been that he
16 obstructed her work and that he disparaged her reputation, but
17 the timing of that that was always to the complaint to
18 Columbia, not to the rebuffing.

19 THE COURT: Do you want to respond to that?

20 MR. MELZER: As your Honor mentioned, it has always
21 been part of our case that she rejected Professor Bekaert's
22 advances, that she did indicate that they were wrong in the way
23 that she was able to, that she was not receptive to them, and
24 because of that he did take an action against her by
25 obstructing her work.

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1 So I think it's perfectly reasonable to frame that as
2 retaliation as the New York City law would do.

3 MR. HERNSTADT: I would just like a representation
4 about what their contention is on this. When did this happen?
5 What was the sexual advance? When was it? And when was it
6 rebuffed?

7 MR. MELZER: We believe that there were a number of
8 advances that were rebuffed, you know, instances where she
9 indicated in words or in substance that she was not interested
10 in more than a professional relationship.

11 And one example in particular is where she was asked
12 to be nicer to him to advance her papers, and she said I'm
13 already as nice as I can be. And that's one example in
14 particular.

15 There's another time in April 2014 where she sent him
16 an e-mail stating that we need to reevaluate our relationship
17 so that everyone is treated professionally, respectfully and
18 correctly.

19 We would postulate that is an instance of protected
20 activity under the New York City Human Rights Law.

21 MR. MUFSON: Your Honor, if I may be heard?

22 THE COURT: Yes.

23 MR. MUFSON: I believe the requisite language that
24 plaintiff's counsel is quoting from *Mihalik* is the following,
25 and it may be instructive here. The Court in *Mihalik* said,

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1 "The New York City Court of Appeals has held that opposing any
2 practice can include situations where a person before the
3 retaliatory conduct occurred merely made clear of her
4 disapproval of the defendant's discrimination by communicating
5 to him in substance that she thought his treatment was wrong."

6 Now, I couldn't write quick enough admittedly to take
7 down exactly what the proposal was to amend the instruction,
8 but clearly it was more than what was contemplated by *Mihalik*.

9 In addition, what plaintiff's counsel just represented
10 is not in our view the communication to the defendant that his
11 conduct was wrong.

12 MR. MELZER: Let me --

13 THE COURT: I'm sorry. Let me just ask a question if
14 you don't mind.

15 What about just having a line that's says something to
16 the effect that protected activity can consist of opposing or
17 protesting conduct to the person engaging in such conduct?

18 So add in the concept that you can -- it is not just
19 about going to the school and complaining, but you can complain
20 to the person who is engaging in that conduct.

21 MR. MUFSON: As long as the conduct is discrimination.

22 The theory behind sort of the expansion of the
23 objection to advances is that, encapsulating protected activity
24 is that the plaintiff has to make clear that she objects to the
25 conduct and views it as discriminatory.

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1 MR. HERNSTADT: For example, that e-mail that
2 Mr. Melzer just referred to in April of 2014, there was no
3 sexual advance there. That was an exchange of e-mails about
4 hiring an RA and the need for research assistant to do the
5 work.

6 THE COURT: I think the proposal by plaintiff had in
7 the language about discriminatory conduct. We can play with
8 the language later.

9 MR. HERNSTADT: Right.

10 THE COURT: But do you have an objection to adding in
11 the concept that you can object to the person engaging in the
12 conduct?

13 MR. HERNSTADT: I think it has to be clear that they
14 have to object.

15 One of the problems here, and I think this is their
16 burden, is that they have to show this was actually
17 communicated. So saying "in substance" I think is too vague.
18 But if the instruction is that the plaintiff communicated to
19 the alleged harasser her or his disapproval -- I forget how
20 your Honor put it, but that would be fine.

21 THE COURT: I was just adding the concept. I haven't
22 really wordsmithed it.

23 MR. MUFSON: Our position is certainly, if it is
24 consistent with the language of *Mihalik*, we would have no
25 objection to it, but that it be clear that the complaint that

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1 is being made and as constituting the protected activity
2 constitutes a complaint of discrimination as opposed to -- I
3 mean, that's contrasted with any gripe that an employee has
4 about conduct that occurs in the workplace is not protected
5 activity, or there would be a lot of protected activity in the
6 city. There has to be more to discrimination.

7 MR. MELZER: Your Honor, she was raising gender-laden
8 issues that the administration recognized was raising EOAA
9 concerns and referred the matter to the EOAA. She is not
10 required to use any particular language to signal that it is
11 about gender or sexual harassment.

12 In reference to *Mihalik*, I think it's useful to cite
13 the particular examples that were considered to be protected
14 activity in that case.

15 One of those was the plaintiff questioned her
16 harasser: What's not working out? Me and you? Or me at the
17 company?

18 That in itself was enough, because that implicitly
19 referenced her rejection of his sexual propositions and
20 communicated in substance that she thought the treatment was
21 wrong.

22 The Court considered that in itself to be denouncing
23 the sexual propositions and creating a situation where he would
24 be liable for retaliation.

25 A second one was rejecting his advances on another

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1 occasion and telling him that his actions were offensive or
2 shameful and that was enough as well.

3 MR. HERNSTADT: Your Honor, the facts in *Mihalik* are
4 drastically different than here. It would be inappropriate to
5 import the actual facts of the case that has no bearing on this
6 case.

7 THE COURT: Let me take another look at the case, the
8 language in it, and I'll consider the arguments you've made.

9 MR. MELZER: Thank you, your Honor.

10 The next thing I would like the Court to consider is
11 on page 17, the end of point one regarding Bekaert's liability
12 for harassment, and the question is whether he could have
13 understood or reasonably could have understood that Professor
14 Ravina's complaints were directed at discrimination.

15 So, one, I would suggest that this instruction isn't
16 called for in the New York City Human Rights Law context, but
17 if it is, we would suggest a revision to the language.

18 But let me start with the first one. My understanding
19 is that this is from a case called *Galdieri Ambrosini* a Second
20 Circuit case from 1998, 136 F.3d 296. That is a Title VII
21 case, whereas the New York City Human Rights Law is broader,
22 and it may not be appropriate to import this into the New York
23 City Human Rights Law.

24 For example, Title VII has no individual liability of
25 perpetrators. There's only liability on the part of the

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1 employer. The New York City Human Rights Law is different.

2 There is liability for defendant Bekaert as the perpetrator.

3 THE COURT: Just to be clear, are you saying that the
4 whole second element altogether --

5 MR. MELZER: Not the second element. The second
6 element that he knew of the protected activity, we would just
7 leave it at that. But this additional explanation of the
8 second element requiring him to understand that it is about,
9 that she was complaining about discrimination.

10 THE COURT: As opposed to what, though? Under your
11 theory she can complain about anything and it cannot be
12 discriminatory or retaliation?

13 MR. MELZER: Let me set forth the scenario that I
14 think is relevant here.

15 If the employee complains to the employer about
16 discrimination, and that's passed on to the perpetrator, but
17 the perpetrator doesn't get the full gist of everything that
18 it's about, it would defeat the purposes of the law to then
19 allow the individual perpetrator to retaliate when the employer
20 is on notice of what this complaint is about.

21 what is relevant is what the victim is complaining
22 about, and the awareness of the employer rather than the
23 details, the specific details of --

24 THE COURT: Just to walk through it, so if you have a
25 scenario where two colleagues have a purely academic -- well, I

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1 should say if one colleague complains about a purely academic
2 dispute, and that's what the other colleague understands, that
3 there was a complaint about an academic dispute and then
4 there's retaliation, that's sufficient for the protected
5 activity?

6 Maybe I didn't phrase that well, but you get the idea.

7 MR. MELZER: That's not what I am suggesting. Let me
8 clarify. If the individual does engage in protected activity
9 by complaining specifically --

10 THE COURT: The retaliator doesn't need to know that
11 it was complaining about protected activity?

12 MR. MELZER: So the complainer -- sorry, the victim
13 complains -- engages in protected activity by complaining of
14 conduct that implicates a protected class.

15 THE COURT: But if it does that, then it's directed at
16 discrimination.

17 MR. MELZER: Right.

18 THE COURT: Right. That's why the language is in
19 there.

20 MR. MELZER: The complaint is directed at
21 discrimination. The victim experiences a retaliatory
22 consequence because she complained about discrimination, but,
23 you know, there is a telephone game and the perpetrator, the
24 individual perpetrator doesn't get the full sense of the
25 details of the complaint, but nevertheless has a retaliatory

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1 motive and lashes out because of the complaint.

2 THE COURT: How can you say that the victim
3 experiences a retaliatory consequence because she complained
4 about discrimination if the so-called perpetrator didn't even
5 know she complained about discrimination?

6 That's what I think you just said.

7 That doesn't make sense, right?

8 MR. MELZER: I think the scenario is that there is a
9 complaint of discrimination, the perpetrator receives that
10 complaint, but is not informed of the precise details.

11 THE COURT: It was about discrimination. That's what
12 we are talking about. It's either about discrimination or it's
13 not, right? What are the other scenarios in which this can be
14 retaliation under the law here.

15 It can't be about stealing someone's work, right?

16 MR. MELZER: Right.

17 My suggestion is that it would weaken the
18 antiretaliation provisions of the law for someone to complain
19 about what is discrimination and being talked about in terms of
20 discrimination, and then there's a dispute about how much gets
21 to the retaliator of that complaint.

22 But we can move on.

23 THE COURT: It sounds like that's withdrawn. OK.

24 MR. MELZER: What I would suggest is that the language
25 be revised at the end to say Professor Ravina's complaints were

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1 directed at potential discrimination or retaliation.

2 THE COURT: When you say potential, she felt that she
3 as discriminated against, right.

4 MR. MELZER: Right.

5 But she doesn't have to be complaining about actual
6 discrimination. It could have been that she felt -- and I
7 mean, this is in the law, that even if it wasn't actual
8 discrimination --

9 THE COURT: But she is complaining about it.

10 MR. MELZER: Correct.

11 THE COURT: About discrimination from her perspective,
12 right?

13 MR. MELZER: Correct.

14 MR. MUFSON: Your Honor, the law requires that the
15 plaintiff put the defendant on notice that she believes that
16 she's being discriminated against, not that there's potential
17 discrimination that could be occurring.

18 THE COURT: Right.

19 MR. MELZER: We would say perceived or possible.

20 MR. HERNSTADT: But she has to make it clear that it's
21 discrimination. It can't be simply saying I'm uncomfortable.
22 There has to be something that links it to gender in this case
23 or some protected, you know, class. Otherwise, as you say, it
24 could be anything.

25 THE COURT: I mean, this doesn't I think directly

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1 respond, but if we change it to that Professor Ravina's
2 complaints were about discrimination or retaliation against
3 her.

4 MR. MELZER: That's fine.

5 THE COURT: OK.

6 MR. HERNSTADT: That's fine, your Honor.

7 MR. MELZER: The next thing is on page 18.

8 THE COURT: OK.

9 MR. MELZER: Regarding Columbia's knowledge of
10 protected activity, and I think that the concept of general
11 corporate awareness may be a little vague to the jury and
12 should be clarified.

13 What we would suggest, at the end of that paragraph
14 right before F --

15 THE COURT: "By that I mean"? That line?

16 MR. MELZER: Yes. So we would add a sentence after
17 that would be our suggestion.

18 After the end of the paragraph and before F, we would
19 say: It is enough that plaintiff made or brought her
20 complaints to one or more Columbia officials, administrators,
21 or legal representatives.

22 MR. MUFSON: Frankly, I think that may be more
23 confusing. I am not sure what an administrator is or an
24 official is. It could be an officer or someone in management.

25 THE COURT: How would you -- because there is another

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1 section in here where I struggled with that. I think I used
2 the word administrator, although I wasn't sure that was the
3 right word to use.

4 MR. MELZER: We could set forth examples, but I think
5 that the idea of general corporate knowledge by itself should
6 be clarified to be helpful to the jury.

7 THE COURT: From Columbia's perspective, do you have a
8 better articulation of that?

9 MR. MUFSON: I think generally the contemplation is
10 that corporate knowledge is imputed by knowledge to a manager
11 or supervisor, and that's generally how I believe it's viewed
12 in the legal context. Here, in the context of a university, it
13 may be a little different, that phraseology.

14 THE COURT: I just want the jury to know who it is
15 that she complained to that could constitute notice to
16 Columbia.

17 MR. MUFSON: Yes. We could say someone in a
18 management role at Columbia.

19 THE COURT: Is it clear the witnesses, for example,
20 who testified, who was in a management role?

21 I mean, was Chris Brown -- he clearly was a manager,
22 but -- I just want it to be clear to the jury who we're talking
23 about. I think legal representatives under the law can count
24 too. Isn't that right?

25 MR. MELZER: Yes. And that was part of what we

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1 suggested.

2 MS. PLEVAN: What does that mean?

3 THE COURT: If you have a better articulation from
4 Columbia, you can think about it while we are doing the rest of
5 it, and then let me know if you have other ideas.

6 MR. MELZER: An alternative suggestion is one or more
7 Columbia officials such as deans, vice deans, provosts,
8 compliance officers or legal representatives.

9 THE COURT: Better or worse, from your perspective?

10 MS. PLEVAN: I don't get the legal representatives.

11 THE COURT: Is that right?

12 Do you have the case citing for it being the legal
13 representative?

14 MR. MELZER: Yes, we do.

15 THE COURT: Who is it factually? Who are we talking
16 about factually?

17 What legal representative was a representation made to
18 as opposed to you know a dean, vice dean?

19 Why is that helpful to the jury?

20 MR. MELZER: I believe there were communications of
21 protected activity to -- between, as we discussed earlier,
22 between the lawyers, including in-house counsel and outside
23 counsel.

24 MR. HERNSTADT: Now we are in settlement negotiations
25 again.

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1 THE COURT: Is there any factual scenario in which a
2 jury could believe that the lawyers were advised, but that the
3 deans, vice deans, vice provost wasn't?

4 MR. MELZER: Possibly not.

5 But in terms of the authority, we have for this
6 instruction that we're requesting, *Summa v. Hofstra University*,
7 708 F.3d 115,.

8 THE COURT: I am more focused on the scenario here and
9 sort of how that helps the jury try and figure out, OK, we are
10 looking at the evidence, we know that a statement was made to
11 this person.

12 MR. MELZER: We are talking about instances of
13 protected activity where it was made clear that a lawsuit was
14 impending. So this is in addition to complaints to the
15 administration about gender discrimination and would go to the
16 timing --

17 THE COURT: So, talking about settlement discussions.

18 MS. PLEVAN: Outside counsel? I don't think that is
19 appropriate at all.

20 MR. MELZER: Some of it is settlement discussion.

21 THE COURT: Let's stay away from settlement
22 discussions.

23 MS. PLEVAN: I think deans, vice deans, vice provost,
24 and other management employees of Columbia would be acceptable.

25 THE COURT: Deans, vice deans, provost, vice provost.

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1 MS. PLEVAN: Management.

2 THE COURT: And others in a managerial position?

3 MS. PLEVAN: Yeah.

4 MR. MELZER: And president.

5 THE COURT: All right. OK. Thank you.

6 MR. MELZER: And we would ask the Court to just refer
7 to that again when we -- at the bottom -- excuse me. Let me
8 see.

9 On page 19, where it says, Columbia's knowledge of
10 protected activity, I state again that general corporate
11 knowledge is sufficient, and just make another reference to
12 that.

13 MS. PLEVAN: I think that's overdoing it.

14 THE COURT: I will make reference to "in the fashion I
15 described earlier," or "as I described earlier."

16 MR. MELZER: The next thing would be the bottom of 21,
17 the paragraph, "I remind you it is not the role of the jury to
18 second guess the decisions of employers."

19 That paragraph we would suggest is unnecessary and
20 could be confusing in this case.

21 MR. MUFSON: Your Honor, that is frankly a standard
22 instruction and is derivative from case law. I'm happy to cite
23 the cases.

24 THE COURT: Why don't you do that.

25 MR. MUFSON: Sure.

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1 THE COURT: If you don't have them here, you can --

2 MR. MUFSON: Just give me one moment.

3 THE COURT: Sure. Take a minute.

4 MR. MELZER: Your Honor, we will withdraw that
5 suggestion.

6 THE COURT: OK. All right.

7 What is your next objection?

8 MR. MELZER: The next suggestion is on punitive
9 damages liability, beginning on page 23.

10 Our concern here is that this may suggest to the jury
11 that, you know, if they find against Professor Ravina, they can
12 go home, but if they find for her they have to say. So we
13 would suggest to revisions to account for that.

14 What I would suggest as a possibility is to take out
15 the first paragraph, and then with the second paragraph take
16 out the first sentence and the first clause of the second
17 sentence and state, "Instead you will also be asked to answer
18 whether defendants are liable for punitive damages," period,
19 and then go right into, "The law authorizes what are called
20 punitive damages."

21 And then on the next page to take out the final
22 sentence, "If you do not decide for Ravina, you need not
23 consider" --

24 MR. MUFSON: Your Honor, our view is that the initial
25 paragraph accurately describes the scenario here.

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1 THE COURT: I think it's unfair. I think it's a fair
2 point. I don't think we want the jury basing its decision on
3 whether it will have to do additional work. I will take a look
4 at this tonight and think about how to --

5 MR. MUFSON: We have other issues to raise with
6 respect to the punitive damages issue, but I can wait until --

7 THE COURT: All right.

8 MR. MUFSON: -- plaintiff's counsel has completed his
9 presentation.

10 MR. MELZER: We are almost done.

11 On page 4, starting with "All Persons Equal Before the
12 Law," the second sentence of that paragraph, "You should
13 consider and decide this case as a dispute between parties of
14 equal standing in the community." We think it is sufficient to
15 say that they are of equal standing before the law, as equal
16 standing in the community could be confusing.

17 THE COURT: OK.

18 MR. HERNSTADT: Your Honor, I believe this is the
19 standard charge.

20 MR. MELZER: We are asking for a modification that is
21 sufficient for the purposes of the charge.

22 THE COURT: I don't have any problem with that change.

23 MR. MELZER: So the next thing is on prior consistent
24 statements, Section L.

25 THE COURT: Yes.

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1 MR. MELZER: Excuse me. Prior inconsistent
2 statements.

3 We would suggest adding something at the end that a
4 prior inconsistent statement by a Columbia administrator may be
5 evidence that its explanation for its conduct is pretextual.

6 MR. MUFSON: We object to that, your Honor.

7 MR. MELZER: It's based on law that shifting
8 explanations is evidence of pretext.

9 THE COURT: We have a whole section on pretext.

10 The idea here is to make it clear that with respect to
11 a party or a party representative -- and again I had asked the
12 question about the word administrator, but that that may be a
13 statement of a party opponent and not just introduced as a
14 prior consistent statement.

15 I don't think we need to have that whole discussion in
16 two places, because we have a whole section on that.

17 MR. MELZER: That's fine, your Honor. I would just
18 then direct your attention to the pretext section then on page
19 23.

20 THE COURT: Sure.

21 MR. MELZER: Where it says in the last paragraph on
22 pretext, "If you find that Professor Bekaert or a Columbia
23 employee has given an implausible or unconvincing explanation"
24 we would suggest in there to add that a changing or shifting
25 explanation, one of those would also be pretext.

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Charge Conference

1 THE COURT: Is there a case that you are citing for
2 that proposition?

3 MR. MELZER: Yes. I believe that we have cited it in
4 our summary judgment papers and also in our proposed
5 instructions, but we can send it to you again.

6 THE COURT: All right.

7 I can look back at those.

8 All right. Is that it?

9 MR. MELZER: Yes. That's it.

10 MR. HERNSTADT: Your Honor, this is something that is
11 just an aside.

12 THE COURT: Yes.

13 MR. HERNSTADT: On the motion that you decided, I just
14 note that in the papers submitted by plaintiffs' counsel there
15 is a reference to the use of the word paranoid, and I want to
16 just make sure that that is not going to appear in --

17 THE COURT: Are you referring to the concern about the
18 use of the word schizophrenic and related words?

19 MR. HERNSTADT: Yes.

20 MR. SANFORD: We had an agreement with respect to the
21 word schizophrenic only, your Honor.

22 THE COURT: I am not going to prevent plaintiff from
23 using the word paranoid. I think the focus was on
24 schizophrenic.

25 All right. Who wants to go first on Columbia's part?

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Charge Conference

1 THE COURT: Yes.

2 MR. SANFORD: Before we do, your Honor, if I may just
3 briefly, I spoke with Betsy Plevan earlier today, and she
4 agreed that, if your Honor would allow, we propose eliminating
5 Title VII and Title IX counts on the verdict form. That would
6 simplify the case for the jury, simplify --

7 MS. PLEVAN: Assuming you are withdrawing those
8 claims.

9 MR. SANFORD: Withdrawing the claims, yes.

10 THE COURT: OK. All right.

11 MR. SANFORD: That would mean that with respect to the
12 verdict form we would eliminate questions 6 and 7 and change
13 references on page 4 accordingly.

14 THE COURT: So, if you are withdrawing those claims,
15 then I have to take out all reference to that in the charge?

16 MR. SANFORD: Yes.

17 THE COURT: OK. Yes. I have no objection to that.

18 Let's just make sure that we get all the references.

19 So I think we will turn to page 12. Let's just go
20 through the substantive instructions to make sure that I don't
21 miss anything.

22 In the first paragraph of the overview of the relevant
23 laws, we really just have the New York City Human Rights Law
24 left, correct?

25 MR. SANFORD: Yes, your Honor.

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1 THE COURT: So that line will read, "Professor Ravina
2 brings claims than the New York City Human Rights Law,"
3 period. Take out the rest of that.

4 And then we will have in the next paragraph on the New
5 York City Human Rights Law, and we will take out the following
6 two paragraphs on Title VII and Title IX.

7 And then on theories of liability, we will take out
8 No. 3 on page 13.

9 MS. HARWIN: Your Honor, in that section, just change
10 the word three to two and also change in the last paragraph the
11 word some to one. The word three appears in the first sentence
12 of that section and the word some.

13 THE COURT: There's still a claim for gender
14 discrimination and a claim for retaliation.

15 MS. HARWIN: Correct.

16 THE COURT: So on all of these claims, one of these
17 claims, or none of these claims is that what you are saying?
18 That "some" should be "one"?

19 MS. HARWIN: Exactly.

20 THE COURT: OK.

21 In Section C on 13, let's see if there's anything we
22 need to delete as a result of this development.

23 All right. Then I think we go to F on 18, right?

24 MR. MELZER: Yes.

25 THE COURT: And we take out all of F.

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1 Take out F1.

2 We are taking out all of page 19.

3 We will take out all of page 20, all of 21.

4 Then the next Section will be G, intent and pretext,
5 correct?

6 MR. MELZER: Yes, your Honor.

7 THE COURT: OK. So I will make those changes.

8 Thank you.

9 Who wants to be heard first? Columbia or Mr. Bekaert
10 on behalf of --

11 MR. HERNSTADT: We are going to speak as --

12 THE COURT: As one?

13 MR. HERNSTADT: One team. It is easier that way.

14 THE COURT: All right. Sure.

15 MR. MUFSON: Thanks.

16 I think that obviated some of the need to go through
17 some of the issues, so hopefully this will be a little quicker.

18 We will start on page 14.

19 Pardon me. Section D, third line from the bottom.

20 THE COURT: What page are you on?

21 MR. MUFSON: Excuse me?

22 THE COURT: What page are you on?

23 MR. MUFSON: Page 14, the third line from the bottom.

24 The charge currently reads, "But also covers any form
25 of mistreatment or unequal treatment based on gender."

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1 That phraseology doesn't take into account the petty
2 slight or trivial inconveniences that are excised from
3 actionable discriminatory conduct.

4 MR. MELZER: That instruction is on page 15, and it's
5 also an affirmative defense.

6 MR. MUFSON: If you will just give me a moment.

7 That concept may be addressed later on, but it still
8 might be confusing to the jury, given that it appears that the
9 two instructions would contradict one another.

10 So we propose that that language be either stricken or
11 incorporates the petty slights or trivial inconveniences.

12 MR. MELZER: Your Honor, petty slights and trivial
13 inconveniences is not an element of liability. This is a very
14 carefully constructed statute, and the legislature and courts
15 made a careful judgment that it would only be an affirmative
16 defense and it should be presented as it is in the Court's
17 instructions in that way, that defendants have to prove it by a
18 preponderance of the evidence.

19 It's not part of the elements of the claim. The
20 elements of the claim are exactly as the court states, that
21 there's any form of being treated less well, unequal treatment,
22 mistreatment that is based at least in part on gender.

23 That's it.

24 MR. MUFSON: The only other issue I would raise, your
25 Honor, is there's the disjunctive there, mistreatment or

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1 unequal treatment, and it could be viewed that unequal
2 treatment is the only words that are being modified based on
3 gender. That was also another concern that we had avoiding
4 jury confusion on that issue as well.

5 MS. PLEVAN: I think the use of the words any form
6 suggests that even trivial matters could be actionable, which
7 is not the law, and *Mihalik* doesn't say that.

8 THE COURT: I'm sorry. I'm missing exactly where
9 you're referring to.

10 Could you just --

11 MR. MUFSON: Sure. We are at the third line from the
12 bottom on page 14. The line starts with the word "harassment."

13 THE COURT: OK.

14 MR. MUFSON: And then states, "But also covers any
15 form of mistreatment" and then says "or unequal treatment based
16 on gender."

17 So it really could be read extremely broadly by the
18 jury, particularly the phrase "any form of mistreatment."

19 THE COURT: How would you rephrase this?

20 MR. MUFSON: I would strike everything after the word
21 "harassment," because you are going to instruct the jury later
22 on on what those terms mean.

23 MR. MELZER: Your Honor, we would disagree with that.
24 This is an accurate assessment of the law. We think there's no
25 confusion that it has to be based on gender because it's all

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1 modifying the term "gender discrimination" and that gender
2 discrimination under the New York City law is very expansive
3 and covers any kind of mistreatment or unequal treatment
4 whatsoever. The standard is treated less well based in part on
5 gender.

6 MR. MUFSON: One way to resolve this is to just state
7 after the word harassment, as I will explain to you what these
8 terms mean next. Because you go into explaining what those
9 terms mean, and there's no need to duplicate that here.

10 MR. MELZER: I think the jury understands what sexual
11 harassment is, but may not get the concept of what, you know,
12 the expansive way that gender discrimination is considered
13 under New York City law.

14 THE COURT: I generally agree with the plaintiff on
15 this. I'm willing to wordsmith it, but I do think the concept
16 of being treated less well should be in here. It is a very
17 expansive --

18 MR. MUFSON: Maybe modify the word. Maybe say but
19 also covers mistreatment because of gender or unequal treatment
20 because of gender.

21 THE COURT: OK.

22 But also covers either mistreatment or unequal
23 treatment because of gender.

24 Does that help or not really?

25 MR. MUFSON: I just think it would be clearer if the

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1 word "because of gender" explicitly modified both.

2 THE COURT: That's fine.

3 MR. MELZER: We think "based on gender" is better
4 because the standard is that it only need be in part on gender,
5 and "because of gender" suggests more than that.

6 MR. MUFSON: The phraseology in *Mihalik* is "because of
7 gender." It is in the statute also.

8 THE COURT: Let me look at the statute, but I will
9 take out the word "any form" of but add "but also covers
10 mistreatment based on gender or unequal treatment based on
11 gender."

12 I will look at, as I said, whether it should be based
13 on or because of. I will just look at the statute and *Mihalik*
14 again.

15 MR. MUFSON: Your Honor, on page 15, it's defendants'
16 view that the plaintiff is pursuing multiple theories of
17 discrimination and that those theories warrant separate
18 instructions, so an instruction regarding hostile work
19 environment, an instruction regarding disparate treatment.

20 So we propose that there be separate instructions on
21 those two theories of discrimination, and I believe that we
22 would be prepared to propose separate instructions on those
23 theories.

24 MR. MELZER: Your Honor, we would disagree with that.
25 There is a unitary standard under the New York City Human

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1 Rights Law that only considers whether someone is treated less
2 well based on their gender. Having separate instructions could
3 be confusing or misleading and complicate things for the jury.
4 It is entitled to consider all the evidence together and
5 determine whether in any part of it plaintiff was treated less
6 well based at least in part on her gender.

7 The notion of petty slights and trivial
8 inconveniences, for example, is something that is unique to a
9 hostile work environment claim. It's derivative of the first
10 department's holding in the *Williams* decisions, which was
11 seized upon by the Second Circuit in *Mihalik*.

12 That all flows from a hostile work environment theory
13 of liability that's encapsulated in the broader term of
14 discrimination, but it is a hostile work environment theory.

15 Our view is that is a different theory than disparate
16 treatment and warrants a separate instruction.

17 That is our position.

18 THE COURT: All right. I will think about that
19 tonight.

20 MR. MUFSON: In the first paragraph on page 15 -- my
21 apologies, your Honor. I just want to get my bearings here.

22 THE COURT: That's fine. Take your time.

23 MR. MUFSON: Here it is, yeah.

24 In the fourth line, we object to the word "negative"
25 and ask that it be stricken.

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1 The plaintiff's burden is that she has to prove
2 differential or unequal treatment based on gender because of
3 gender.

4 Negative treatment, I am unaware of that being used in
5 any case law, and I think that is vague and ambiguous.

6 MR. MELZER: Again it's modified here by "negative
7 treatment at least in part based on her gender" and we think
8 that is an appropriate instruction to convey.

9 It's any kind of negative differential, adverse
10 treatment that has a gender component to it.

11 MR. MUFSON: I don't know what negative treatment
12 means.

13 THE COURT: What about adverse?

14 MR. MUFSON: I think adverse would be fine.

15 THE COURT: Adverse, differential, or unequal
16 treatment. OK.

17 MR. MELZER: We do think that "negative" is more of a
18 colloquial term that the jury will understand rather than a
19 legal term.

20 THE COURT: Have you ever heard someone talk about
21 negative treatment?

22 MR. MELZER: Sure.

23 MR. MUFSON: In a case?

24 THE COURT: I think adverse --

25 MR. MUFSON: Thank you, your Honor.

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1 THE COURT: -- grammatically, among other things, is
2 preferable.

3 MR. MUFSON: The continuation of that sentence on page
4 15, line 4 starts, "Professor Ravina does not need to identify
5 a man who was treated more favorably."

6 We ask that that sentence be stricken. Frankly, one
7 way to prove discrimination is to prove disparate treatment,
8 that a man was treated more favorably, and that is one of her
9 claims here, so we object to this sentence.

10 MR. MELZER: One way to prove the treatment is to show
11 a man who was treated more favorably, but there's nothing that
12 requires it in the New York City law.

13 We want to make sure there is not a misleading
14 impression that treated less well means that you have to
15 compare yourself to a man. There's no case law that imposes
16 that requirement.

17 MR. MUFSON: Your Honor, our view is that the jury
18 should be instructed on what the plaintiff has to prove, not
19 what she doesn't have to prove. I think that this sentence can
20 be misconstrued and frankly is confusing and misstates her
21 burden, could potentially misstate her burden.

22 MR. MELZER: We think it could be confusing to say
23 treated less well without it, because less well compared to
24 whom? Because it is not a requirement that she specifically
25 identify a man who was treated better.

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1 MR. MUFSON: The treated less well standard is lifted
2 directly from *Mihalik*. *Mihalik* does not use the language that
3 she doesn't have to identify a man who was treated more
4 favorably than she was.

5 Frankly, I think that it would be prudent just to rely
6 on the language in the case, and that is the standard. That is
7 she has to prove. I think it is clear.

8 MR. MELZER: We think it would avoid a misleading
9 impression.

10 THE COURT: I don't think it would be misleading
11 without it. The question is would this be helpful or would it
12 be misleading with it? But I will think about that.

13 MR. MUFSON: Thank you.

14 So the next sentence that starts "even a single
15 comment," again this does not incorporate the notion of
16 petty -- let me back up.

17 The reason that we generally believe that there should
18 be multiple instructions based on the different theories of
19 discrimination here is particularly for the confusion that
20 could potentially be caused by these two sentences, right?

21 The sentence, "Professor Ravina does not need to
22 identify a man who was treated more favorably" bears on
23 disparate treatment, whereas the next sentence concerns hostile
24 work environment, comments that were made to her in the
25 workplace -- just to set the framework there.

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1 With respect to this specific sentence it does not
2 incorporate --

3 (Continued on next page)

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Charge Conference

1 THE COURT: This is from Mihalik.

2 MR. MUFSON: This statement is. But it does not
3 include the notion that petty slights or trivial inconveniences
4 are not actionable. Like those would not qualify. So there
5 should be a carve-out that even a single comment that
6 objectifies women, if made in circumstances where the comment
7 would signal views about the role of women in the workplace,
8 except for petty slights or trivial inconveniences.

9 THE COURT: That's what I say a couple lines later.

10 MR. MELZER: And the idea here is that if, and this is
11 not only Mihalik, but also Williams, the case from the First
12 Department, this is an accurate statement. A single comment is
13 sufficient. If the comment signals views about women in the
14 workplace, it is not a trivial slight or petty inconvenience.
15 It is only a trivial slight or petty inconvenience if it
16 doesn't signal views about the role of women in the workplace.
17 If it is a paper cut. The idea that because it signals views
18 about the role of women in the workplace, it's serious and
19 injurious, even though it is only one comment.

20 So everything is adequately dealt with the way that
21 this is written about the plaintiff's burden and then the
22 affirmative defense of petty slights and trivial inconveniences
23 and we shouldn't suggest that petty slights and trivial
24 inconveniences is any more than an affirmative defense which on
25 which the burden shifts.

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1 MR. MUFSON: I'll just say the words "may qualify"
2 also are vague. I think actually the words from Mihalik are
3 actionable. In the summary judgment context is what the Court
4 was discussing there. But, even here, if the Court is inclined
5 to maintain this language, we suggest the use of the phrase
6 "may demonstrate discriminatory animus based on gender."

7 MR. MELZER: It is not only indicative of the intent
8 but in itself it is an actionable conduct that gives rise to a
9 claim. So it is not just an indicator of intent.

10 MR. MUFSON: I just think that the phrase "may
11 qualify," may qualify for what?

12 THE COURT: How about may be sufficient to give rise
13 to such a claim.

14 MR. MELZER: Sure.

15 MR. MUFSON: Well, may be sufficient to give rise to a
16 claim of gender discrimination. I still think that the
17 phraseology should be "may."

18 THE COURT: I'll consider that. I just want to look
19 back at Mihalik, I'll look at Williams again, and I'll look at
20 other charges in the district and see if other judges
21 instructed separately on different theories of liability or
22 not.

23 MR. MELZER: I would like to reiterate that there are
24 no different theories of liability. Under the New York City
25 Rights Law, gender discrimination claim, it is a single theory

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1 of being treated less well and there's different conduct that
2 plays into that. But it is one theory. We don't have to
3 establish a hostile work environment, we don't have to
4 establish, you know, disparate treatment as compared to a man.
5 We only have to establish that someone was treated less well.
6 Which includes sexual harassment, but includes any other form
7 of conduct that is based at least on part on gender. And we
8 think it would be unnecessary, confusing, and proliferate the
9 instructions to have separate instructions for different
10 theories that we're not required to have and don't have.

11 MR. HERNSTADT: Your Honor, this is so long ago my
12 recollection is --

13 THE COURT: Bring the mic closer.

14 MR. HERNSTADT: It is so long ago my recollection is
15 not exactly precise, but I thought that when you described the
16 case to the jury at the beginning of the trial, you mentioned
17 different theories.

18 THE COURT: Look, I took what you all proposed in
19 terms of the summary, and I, aside from some wordsmithing did
20 the same in this charge in articulating the positions of the
21 parties.

22 MR. HERNSTADT: I think the plaintiff laid out that
23 different theories. That because those were the four different
24 claims in the complaint. There was in the complaint they had a
25 claim for quid pro quo, they had a claim for hostile work

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1 environment, they had a claim for gender discrimination, and
2 they had a claim for retaliation. And I think that was laid
3 out in the opening presentation to the jury. My recollection
4 may be incorrect on that.

5 MR. MELZER: They were set forth in the complaint but
6 they're not separate claims at this point. They're examples of
7 conduct that would go into the theory and the standard of being
8 treated less well, based on gender.

9 THE COURT: All right. As I said, I'll think about
10 that tonight.

11 MR. MUFSON: Your Honor, we request on 15, on page 15
12 that the following language be added. And this is directly
13 from the Mihalik case. "The New York City human rights law is
14 not a general civility code. The plaintiff still bears the
15 burden of showing that the conduct is caused by discriminatory
16 motive. It is not enough that a plaintiff has an overbearing
17 or obnoxious boss. She must show that she has been treat less
18 well at least in part because of her gender."

19 MR. MELZER: Your Honor, we think that is already more
20 than adequately covered by the instruction on the bottom of 15,
21 that I objected to. About personality conflict, co-worker
22 dislike, and the idea of it not being a general civility code.
23 The way that the statute accounts for that is by creating the
24 petty slights and inconveniences as an affirmative defense and
25 that's the Williams case. And that is completely instructed

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1 here to the jury, and that addresses the idea of it not being a
2 general civility code, and there is plenty in this instruction
3 about needing to be based on gender.

4 MR. MUFSON: Case after case starting with Williams
5 and ending with Mihalik and subsequent to Mihalik, there are a
6 number of district court decisions that use the phrase to make
7 clear that the New York City Human Rights Law is not a general
8 civility code. It is the way to distinguish between what is
9 actionable and what is not. It makes clear to the jury that
10 just because you are not nice to someone or you're not civil to
11 them, that's not discrimination. You have to prove that the
12 defendant is motivated by discriminatory animus. That the law
13 that we're talking about here is not a general civility code.
14 We believe that is an important piece of this instruction. And
15 language that's lifted directly from the Second Circuit's case
16 in Mihalik.

17 MR. MELZER: We think that is already adequately
18 covered by the instructions. There is a big difference between
19 a summary judgment decision that expounds the law and a jury
20 instruction that is supposed to simply and efficiently explain
21 to the jury what it needs to do. So, expansive statements from
22 cases when the concepts are adequately covered aren't
23 necessarily appropriate.

24 THE COURT: Again, I'll look back at Mihalik, I'll
25 look at Williams and I'll look at some other charges and see

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1 how much of the language is and should be used.

2 MR. MUFSON: Thank you, your Honor.

3 In the second paragraph on page 15, we request that
4 the following be added after the words "on her gender." Well,
5 strike that. We request that the first sentence or this
6 paragraph be replaced to state that the plaintiff must prove
7 that her gender was a motivating factor behind Professor
8 Bekaert's alleged actions that he took -- alleged actions that
9 he allegedly took to derail her research and prevent her from
10 earning tenure, to crystalize what the actual actions, adverse
11 actions were.

12 THE COURT: You said the second paragraph on 15. The
13 second paragraph on my 15 starts with "If you find that
14 Professor Bekaert treated Professor Ravina less well."

15 MR. MUFSON: I apologize. It is the third paragraph.

16 THE COURT: So --

17 MR. MUFSON: The first sentence of the third
18 paragraph.

19 THE COURT: Okay.

20 MR. MUFSON: It be replaced with "Plaintiff must prove
21 that her gender was a motivating factor behind the actual
22 decisions that Professor Bekaert made to allegedly derail her
23 research and prevent her from earning tenure."

24 MR. MELZER: Your Honor, the claim considers all of
25 defendant Bekaert's conduct. It is not limited to interfering

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1 with the research and there is no allegation that he made a
2 decision regarding her employment. The claim considers all of
3 her -- all of his conduct. The totality of the circumstances.
4 And the charge as written adequately instructs about what her
5 burden is. She must prove that the conduct is motivated at
6 least in part on gender, which means that it is a motivating
7 factor. And then about what a motivating factor is.

8 So the jury is entitled to consider all of the conduct
9 and whether it satisfies the standard and reaches decision
10 based on any of the conduct or the conduct together and need
11 not be limited to particular instances of conduct, and there
12 shouldn't be anything suggesting more than what we've tried to
13 prove or that we have proved by suggesting that he made a
14 decision to derail her research or that he made a decision to
15 deny her tenure.

16 It is appropriate for the jury to consider whether any
17 or some or all aspects of his conduct satisfy the standard
18 under the New York City Human Rights Law.

19 THE COURT: I don't really understand the point of
20 what you want to add. You basically want me to marshal the
21 evidence on the theory.

22 MR. MUFSON: The point is to crystalize what the
23 conduct that has been --

24 THE COURT: I don't think it is appropriate for me to
25 do that. I think you all can do that.

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1 MR. MUFSON: Our next request is on page 16. We ask
2 that at the beginning of section two under Columbia, that the
3 following sentence be added: "If you determine that Professor
4 Bekaert is not liable for discrimination, you must similarly
5 return a verdict in favor of Columbia on plaintiff's gender
6 discrimination claim."

7 MR. MELZER: Your Honor, I think that's clear enough
8 from the verdict form. But in principle we're not opposed to
9 that.

10 THE COURT: Okay. So we'll add that in.

11 MR. MUFSON: Then if that's added, we would ask that
12 the word "additionally" be stricken.

13 And then in what currently exists at paragraph one,
14 under section two, we ask that the word "only" be added after
15 the word "discrimination" in the third line. So, it would
16 read, "This also liable for the discrimination only if you find
17 either one that Columbia knew of Professor Bekaert's conduct."

18 MR. MELZER: It is clear this is conditional. But we
19 also think it should be made clear not only that they may find,
20 but if either of these conditions are satisfied, they must find
21 that Columbia is liable for Bekaert's conduct.

22 THE COURT: Okay. I'll take those objections into
23 consideration.

24 MR. MUFSON: We ask that the second paragraph under
25 section two on page 16 be stricken. As these sort of factors

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1 have not been enumerated as those factors to be considered
2 under the New York City Human Rights Law. And frankly, the New
3 School decision by the Court of Appeals, the New York Court of
4 Appeals, held that an employer's anti-discrimination policies
5 and procedures actually shield against liability. But, I don't
6 believe employers are required to actively or adequately
7 monitor their employees. I am unaware of any such requirement.

8 MR. MELZER: We think this is useful guidance on
9 things that the jury may consider to flesh out a little bit.

10 THE COURT: Where does it come from? Does it come
11 from case law? Does it come from prior charges? Where is this
12 language from?

13 MR. MELZER: We've cited numerous cases on ways that
14 an employer can be negligent or fail to address discriminatory
15 conduct. And I think the law, the New York City law is Title
16 VII is a floor but not a ceiling. So law from the Title VII
17 context can illuminate ways in which the New York City law
18 would apply.

19 New York City law is only broader and more liberal and
20 expansive, not less so. So if there are things that are
21 relevant under Title VII law, they would also be indicative of
22 a failure to adequately address the situation under New York
23 City law.

24 I think the law is clear under both federal and city
25 law that the mere fact that an employer has policies on paper

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1 doesn't insulate its conduct. They actually have to enforce
2 those policies in a meaningful way and address the behavior.
3 And that's reflected precisely in one and two, which is
4 language taken directly from the statute. That Columbia
5 allowed the conduct to continue or failed to take immediate and
6 corrective action or should have known of the conduct yet
7 failed to exercise reasonable diligence to prevent it. That's
8 in terms of what they actually did and their actual conduct,
9 not simply having a policy.

10 MR. MUFSON: Your Honor, I would just say that what is
11 or what is not reasonable diligence is a determination for the
12 jury. But, certainly, the notion that Columbia can be held to
13 have not exercised reasonable diligence by not actively or
14 adequately monitoring its workplace, I'm not even sure,
15 frankly, what that means. I am unaware of any cases that
16 discuss that phraseology. I don't know if that means we're
17 supposed to have cameras. I think that would raise a
18 heightened burden upon Columbia to demonstrate, to meet these
19 factors.

20 What is required, and frankly, I would direct your
21 Honor to the New York Court of Appeals decision in the New
22 School case, which is at, give you the cite, your Honor. 14
23 N.Y.3d 469 (2010), which dealt with the Faragher-Ellerth
24 defense and the inapplicability of that defense under the human
25 rights law, but in so holding, the court addressed the

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1 non-supervisory harassment and specifically stated that
2 adopting policies would be reasonable diligence under that
3 prong.

4 THE COURT: Let's just look back. I think this
5 language may come from the Vance case. So, let's look at that.
6 And see if it is outlined there. But I'll take a look at New
7 School in addition.

8 MR. MELZER: Your Honor, we're not suggesting that any
9 of these factors are dispositive. But we are suggesting that
10 it's useful for the jury to have some factors to consider or
11 things that it might consider when determining if a response to
12 workplace conduct or exercising reasonable diligence to prevent
13 discriminatory behavior, it's useful to have certain factors on
14 whether those elements are met. Again, not that any one of
15 them would be dispositive. That not having cameras, and we're
16 not suggesting that there need be cameras, but that not having
17 cameras would, you know, is dispositive. It is to monitor
18 what's going on in the workplace. One example that we've
19 had -- to be aware of what's going on in terms of
20 discriminatory behavior and attempting to address it.

21 THE COURT: I understand.

22 MR. MELZER: Yeah.

23 THE COURT: I do.

24 MR. MUFSON: Just briefly note, your Honor, I think
25 the Vance case, the court may address some of these factors.

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1 THE COURT: And just because it's in a case, look, I
2 think this is a theme that we have throughout, which is because
3 a case says something, how much of that language do you need to
4 present to the jury. If a particular issue is being decided in
5 a particular case, is it something that we need to advise the
6 jury or can they figure out for themselves what it means to
7 have exercised reasonable diligence or not. Are the examples
8 helpful or will they somehow get stuck on those specific
9 examples. And that's what I want to think about. As I said,
10 I'll look at other charges from the district to see how much
11 guidance courts generally give.

12 MR. MUFSON: Thank you, your Honor. That is our
13 concern.

14 MR. MELZER: We think it is useful to have a few
15 examples, and we've cited case law supporting these in our
16 proposed charge and in our summary judgment papers.

17 MR. MUFSON: Moving on, your Honor, our next, on page
18 16 under section E, the second paragraph -- just forgive me. I
19 just need one moment, your Honor.

20 THE COURT: Sure.

21 MR. MUFSON: It's actually on page 17, the first full
22 sentence on that page. We object to that sentence. We object
23 to that sentence and request that it be replaced with --

24 THE COURT: The one regarding any manner of
25 retaliation, that one?

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1 MR. MUFSON: Yes. That to meet her burden of proving
2 she is engaged in protected activity it is enough. And then
3 continue with that sentence.

4 MR. MELZER: This is directly from the statute. And
5 emphasizes the broad scope of the New York City rights law that
6 any manner of retaliation is covered.

7 MR. MUFSON: We don't object to that. It is just to
8 clarify it to lead into that sentence, to state to meet her
9 burden of proving that she engaged in protected activity, it is
10 enough that Professor Ravina complained about, opposed or
11 pursued good-faith claims of discrimination or harassment.

12 THE COURT: I'll think about that, too.

13 MR. MUFSON: After that sentence, we request that the
14 following be added, which is directly from the New York City
15 Human Rights Law. To ultimately succeed on her retaliation
16 claim, under the New York City Human Rights Law, plaintiff must
17 prove that Professor Bekaert and/or Columbia were motivated at
18 least by part by retaliatory animus in taking adverse actions
19 against plaintiff.

20 MR. MELZER: I think the idea of retaliatory motive is
21 amply covered in the Court's instructions and what that means.

22 MR. MUFSON: This is the introduction to the
23 retaliation claim section. And our view is that it's slanted
24 towards the, frankly, towards what the plaintiff has to prove
25 and leaves out the ultimate burden which is the motivating

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1 factor test.

2 MR. MELZER: It is right there in element four.

3 Retaliation was a motivating factor of any such actions. And
4 then again for Columbia, retaliation was a motivating factor of
5 any such actions, and the Court defines motivating factor and
6 what that means.

7 THE COURT: All right. I'll consider that as well.

8 MR. MUFSON: Then the last paragraph before section
9 one on page 17, addresses it prohibits any manner of
10 retaliation. And we add, we request that the following
11 sentence be added after that sentence. "However, personality
12 conflicts, petty slights, snubbing, minor annoyances, simple
13 lack of good manners, and other ordinary tribulations of the
14 workplace do not qualify as retaliatory acts." That is from
15 Mihalik and also from a Southern District decision from 2015,
16 Villar v. City of New York, 135 F.Supp.3d 105, 129.

17 MR. MELZER: I think that's already been covered in
18 the Court's instructions, but that is addressed by the idea
19 that the actions must be reasonably likely to deter a person
20 from engaging in protected activity. The jury can understand
21 that standard of what it means to be reasonably likely to deter
22 a person in plaintiff's shoes from engaging in protected
23 activity.

24 THE COURT: Again, I think we obviously have just a
25 general question about how much language to put in and where,

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1 and I'll consider that, too. And just make sure that it's
2 balanced so it doesn't favor one side or the other.

3 MR. MUFSON: I would just note there was some language
4 in the federal law retaliation section about sort of
5 encapsulating this concept, but now that the federal
6 instruction has been excised, we believe that this language
7 should be incorporated particularly in this section here and it
8 is directly derivative of the court's decision in Mihalik. It
9 came from page 20 of the Court's instruction that's no longer
10 going to be given.

11 THE COURT: Yes.

12 MR. MELZER: There is also language in Mihalik coming
13 from Williams that the assessment should be made with a keen
14 sense of workplace realities of the fact that the chilling
15 effect of particular conduct is context dependent, and the fact
16 that a jury is best suited to evaluate the impact of
17 retaliatory conduct.

18 A lot of this goes to the summary judgment standard.
19 And so the jury also needs to adopt a keen sense of workplace
20 realities and what is likely to have a chilling effect. So, if
21 there is going to be, you know, extra language, there should be
22 a good deal of extra language.

23 MR. MUFSON: I'll move on.

24 We ask and this will be the same request for the
25 instruction in terms of the elements for retaliation for

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1 Professor Bekaert and Columbia, but I can cover it once.

2 On page 17, because I think the instructions repeat
3 the four elements twice, that it be made clear after the
4 recitation of the four elements, that the fourth element is the
5 causal connection element. And courts routinely, they actually
6 either use and sometimes use both, that the plaintiff must
7 prove that retaliation was a motivating factor in any such
8 actions, meaning that there was a causal connection between the
9 protected activity and the adverse actions, and we ask that be
10 clarified there. So that the following sentence be added at
11 the end of paragraph one under section one on page 17.

12 THE COURT: After Bekaert.

13 MR. MUFSON: After that part. In other words --

14 THE COURT: Sorry. Within the Bekaert section, right?

15 MR. MUFSON: Within the Bekaert section and then again
16 in the Columbia section. "In other words, plaintiff must prove
17 that there was a causal connection between the protected
18 activity and the adverse action."

19 MR. MELZER: The elements are clearly stated here. It
20 says that retaliation had to be a motivating factor in any of
21 the retaliatory actions. And we think the jury is well
22 equipped to understand that motivating factor connected to the
23 action implies causation without incorporating potentially
24 confusing language about causal connection, which is more legal
25 language.

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1 MR. MUFSON: We believe this would aid the jury and
2 remedy any potential confusion, and frankly, I'm happy to
3 direct the Court to various decisions that use that particular
4 language. If that would be helpful.

5 THE COURT: Sure.

6 MR. MUFSON: Whitley v. Montefiore Medical Group, 2016
7 WL 1267788 (S.D.N.Y. March 30, 2016); Roberts v. UPS 115
8 F.Supp.3d, 344, 370 (E.D.N.Y. 2015); the Mihalik decision also
9 uses similar language. Ya-Chen Chen v. City of New York, 2014
10 WL 1285595 at page 10, which is a Southern District opinion
11 from March of 2014 that was affirmed on appeal by the Second
12 Circuit in 2015.

13 MR. MELZER: We don't doubt that there's case law
14 often in the legal or summary judgment context which uses that
15 language. But we think what is important for the jury is that
16 they get the concepts and ideas. And the concept and idea is
17 already there.

18 THE COURT: Okay.

19 MR. MELZER: Of retaliation being a motivating factor.

20 THE COURT: I got it. Thank you.

21 MR. MUFSON: We also ask that at the end, along the
22 same lines, at the end of that first paragraph, after the
23 sentence that we just requested, that the following sentence
24 also be added: "Plaintiff must prove all of these factors to
25 prove her claim." Again, to clarify what her burden is.

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1 MR. MELZER: It's clear enough when you're listing
2 four factors that need to be met.

3 MR. MUFSON: I think the special verdict form that was
4 provided to the parties does not list out the elements of a
5 claim of retaliation.

6 THE COURT: I think without adding another line, I can
7 add it before we list the factors, "plaintiff must show by
8 preponderance of the evidence each of the following factors" or
9 something to that effect.

10 MR. MUFSON: That would be fine. Thank you.

11 MR. MELZER: That's fine.

12 MR. MUFSON: In the third paragraph under section one
13 just a minor language change. Instead of the words "directed
14 at discrimination," or "were directed at discrimination," we
15 propose "concerned gender discrimination."

16 THE COURT: Tell me where that is again, third
17 paragraph under section one.

18 MR. MUFSON: Page 17, under the Bekaert section. The
19 words last sentence, last line of that section.

20 THE COURT: I think we already changed that to about
21 discrimination or about retaliation against her.

22 MR. MUFSON: That's fine.

23 MR. MELZER: We would just ask that discrimination say
24 including sexual harassment.

25 THE COURT: I think you didn't want me to list all the

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1 forms of discrimination, right? You didn't want me to break it
2 down.

3 MR. MELZER: That's right. But just to be clear that
4 sexual harassment is a form of gender discrimination, at least
5 at some point.

6 THE COURT: Did we not make that clear earlier?

7 MR. MELZER: It only appears once.

8 MR. MUFSON: I think that's made clear at the outset
9 of the section on gender -- on gender discrimination. That
10 there are two theories, right, that harassment and disparate
11 treatment.

12 THE COURT: I think we say on page 14, we say under
13 that specific law, the term gender discrimination includes the
14 concepts of hostile work environment and sexual harassment.
15 But also covers mistreatment based on gender or unequal
16 treatment based on gender.

17 MR. MELZER: That's fine.

18 THE COURT: Okay.

19 MR. MUFSON: Your Honor, on page 17, subheading two
20 for Columbia we just reiterate for the record, we just
21 reiterate our objections to this instruction for the reasons
22 set forth in our letter of July 22. We understand your Honor
23 has ruled on this issue, but I wanted to make the record clear.

24 THE COURT: That's noted for the record. Thank you.

25 One question I had, and we talked about this a little

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earlier and I think we changed one section to include examples of Columbia representatives like dean, vice dean, provost, vice provost. But in the section on prior inconsistent statements, on page 11, it says where, however, the witness is the plaintiff, or one of the defendants. And then I have written now in the case of Columbia school administrator and by a prior statement has admitted some fact or facts.

Do we want to change school administrator to say something different?

MR. MUFSON: I think so. I think we would use the same language.

THE COURT: Or we can say where, however, the witness is the plaintiff or one of the defendants or a representative thereof. Unless you think that's too ambiguous.

MR. MELZER: We would prefer administrator to representative.

MR. MUFSON: We would use the same language that was said before. Because that's, that is the employer for -- as the law views it.

THE COURT: All right. Again I think we said dean, vice dean, provost, vice provost, president, or --

MR. MELZER: Other members of management.

THE COURT: Other member of management?

MR. MUFSON: Or other employees of Columbia management.

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1 THE COURT: Any additional objections?

2 MR. MUFSON: Just a few, your Honor.

3 THE COURT: Okay.

4 MR. MUFSON: So just back to page, sorry, page 18, we
5 would make the same request with respect to the elements of
6 retaliation that were requested on page 17 with respect to
7 Professor Bekaert apply also for Columbia.

8 THE COURT: Okay.

9 MR. MUFSON: Or be added in the instruction concerning
10 Columbia's conduct.

11 MR. MELZER: We would have the same response.

12 THE COURT: Yes.

13 MR. MUFSON: So I'll skip now I believe, just move to
14 page 22, intent and pretext. Your Honor, I apologize. We ask
15 since the instruction about no second guessing an employer's
16 business decisions is now going to be eliminated from the
17 instructions, because the federal law instruction is going to
18 be excised, we ask that that concept be added to the prior
19 instruction essentially the effect that it's not for the jury
20 to second guess an employer's decision, that it's for them to
21 find whether or not the employer was motivated by
22 discriminatory retaliatory animus.

23 MR. MELZER: We think that's misleading and confusing
24 here. Both under the fact that it is a New York City Human
25 Rights Law claim which is very expansive, and under the broad

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1 treated less well standard and the fact that the claims don't
2 just concern decisions. And the claim of discrimination is
3 based on defendant Bekaert's conduct in terms of first engaging
4 in sexual harassment, and also engaging in alleged obstruction
5 of the research. And the tenured, as the Court --

6 THE COURT: We're talking about Columbia here.

7 MR. MELZER: And the argument that we've been allowed
8 to advance is that Columbia was negligent in failing to prevent
9 defendant Bekaert's conduct from exercising an influence on the
10 tenure vote. So it is really not based on whether there is a
11 material adverse action based on good reasons, bad reasons,
12 erroneous facts, or no reason at all. If defendant, under the
13 cat's paw theory, if they are provided with erroneous facts or
14 with stuff that could poison her tenure and then act on that
15 and fail to address it, there is liability. So, we think this
16 paragraph is unnecessary and confusing.

17 The reality is the Court would instruct the jury on
18 whether defendant Bekaert's conduct meets the standard, and the
19 Court has an instruction to the jury on what means for Columbia
20 to be liable for that conduct.

21 THE COURT: I think what would be helpful, actually,
22 is obviously I have the instructions that you submitted
23 initially. For Columbia, since you're proposing so much
24 additional language, just for those critical few pages, 16, 17,
25 18 that we talked about, and maybe in this section, if you can

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1 just submit, I don't care if it's handwritten or redlined, but
2 a version of what you're asking.

3 MR. MUFSON: We would be happy to do that.

4 THE COURT: I've gotten everything plaintiff proposed,
5 but I think since you're suggesting more language in different
6 places, I want to take a look at it. And as I said a number of
7 times, I'll look back at case law on other charges and just try
8 and balance how much language to put in.

9 MR. MUFSON: We can indicate it in red or something.

10 THE COURT: That's fine. I don't care about the
11 format.

12 MR. MELZER: The other thing we would point out, your
13 Honor, is Columbia specifically instructed its faculty that
14 they could not consider the circumstances and those --

15 THE COURT: Honestly, I'm not really one for
16 marshaling the evidence. And frankly I included a whole
17 section only because you all asked me to saying what your
18 arguments were. I don't generally do that. I did it because
19 everyone wanted me to. You can make your arguments to the jury
20 but I don't plan on making them. I want to tell them what the
21 law is. Beyond what's already in here.

22 MR. MELZER: So we do think this paragraph is
23 misleading in part because --

24 MR. MUFSON: What paragraph?

25 MR. MELZER: The second paragraph on 22, that they're

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1 seeking to add to the New York City Human Rights Law
2 instruction. They instructed the faculty that not to consider
3 the circumstances, not to consider the claims or allegations
4 and just to vote as if those were not in issue. Just vote on
5 the record as it stood and everything else will be left for a
6 court.

7 THE COURT: I don't understand what your point is.

8 MR. MUFSON: Yeah.

9 MS. PLEVAN: The facts on that issue are disputed in
10 any event. But I don't know what language --

11 MR. MELZER: The idea that --

12 THE COURT: Just tell me exactly what language, I
13 don't need the argument. I've already got your argument.

14 MR. MELZER: The language about it's not the role of
15 juries to second guess. Columbia set it up that the faculty
16 wouldn't be making that decision. That they should defer it,
17 leave it for the Court.

18 MR. MUFSON: Our request is just merely that language
19 be added which we can send to the Court for the Court's
20 consideration. The standard charge that it's not the province
21 of the jury to second guess legitimate decisions by employers.
22 But I think we'll propose the language for your Honor's
23 consideration.

24 THE COURT: So the language we had in that's now out,
25 because these claims are out, read: In this regard I remind

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1 that you it's not the role of juries to second guess the
2 decisions of employers. Generally, an employer may take a
3 material adverse employment action against an employee based on
4 a good reason, a bad reason, a reason based on erroneous facts
5 or no reason at all. Only if Professor Ravina has proved by a
6 preponderance of the evidence that the adverse action would not
7 have occurred but for her protected activity should you find
8 Columbia liable.

9 So what's wrong with that? Is that not an accurate
10 statement of the law?

11 MR. MELZER: We think it's confusing and unnecessary
12 under what the New York City Human Rights Law --

13 THE COURT: Is it an inaccurate statement of the law?

14 MR. MELZER: Yes, because there doesn't need to be a
15 material adverse employment action under New York City Human
16 Rights Law.

17 MR. MUFSON: That can be --

18 THE COURT: What if we change the language to say only
19 if Professor Ravina has proved by a preponderance of the
20 evidence that she was treated less well.

21 Am I confusing the standards?

22 But for her protected activity should you find
23 Columbia liable.

24 MR. MELZER: That is also an inaccurate statement of
25 the New York City Human Rights Law. There is no but for

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1 standard.

2 MR. MUFSON: We can propose some language, your Honor,
3 that addresses incorporating the motivating factor standard.
4 But I think the principle it is not the role of juries to
5 second guess the decisions of employers generally and their
6 role is to determine whether there is discrimination or
7 retaliation, really shouldn't be controversial. That's what
8 law is.

9 THE COURT: Got it. Okay. I understand the
10 positions, so I'll take a look at that.

11 MR. MUFSON: The last section that we'd like to
12 address is the section on punitive damages that begins on page
13 23, or punitive liability, pardon me.

14 So we object to any instruction on punitive liability,
15 as just as a matter for the record. If your Honor is inclined
16 to instruct the jury on punitive liability, we ask a number of
17 changes be made to this instruction. We're happy to submit our
18 proposed language.

19 THE COURT: Make the argument now because I want to
20 give you an updated draft so you can use whatever language you
21 want to use in your summations.

22 MR. MUFSON: Sure. So there are a number of complex
23 terms that are contained in this instruction. Because those
24 terms come from a recent decision by the New York Court of
25 Appeals, the Chauca decision. For example, willful or wanton

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1 negligent, malice or reckless indifference, recklessness or
2 conscious disregard for the rights of others or conduct so
3 reckless as to amount to such disregard.

4 Other courts have interpreted what that means from a
5 legal perspective. And so therefore we request that if this
6 instruction is going to be given, that the jury be instructed
7 about what those terms mean. What reckless, what malice means,
8 or what reckless indifference means. And we have language that
9 we would -- I'm happy to propose it now.

10 THE COURT: What do you propose now and tell me which
11 cases it comes from, please.

12 MR. MUFSON: So, this from the In Re Methyl Tertiary
13 Butyl Ether Products Liability Litigation, which is 2009 WL
14 3347214 (S.D.N.Y. October 19, 2009), which was affirmed 725
15 F.3d 65. And we would add the following language: To justify
16 punitive damages, based on wanton and reckless conduct, the
17 defendant must have acted with a conscious indifference and
18 utter disregard of its effect upon the health, safety or rights
19 of others.

20 MR. MELZER: Your Honor.

21 MR. MUFSON: May I finish?

22 THE COURT: Yes.

23 MR. MUFSON: Also, to support a finding of actual
24 malice there must be a "evil motive on the part of the
25 defendant such that the defendant's actions were done out of

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1 hatred, ill will or spite for the plaintiff." And just to cite
2 there, that's from a New York pattern jury instruction civil
3 2:278 which states an act is wanton and reckless when it
4 demonstrates conscious indifference and utter disregard for its
5 effect upon the health, safety and rights of others.

6 I'd also direct the Court to Gruber v. Craig, 208
7 A.D.2D 900, which is a 2nd Department decision from 1994
8 defining wanton and recklessness. Which that decision quotes
9 the New York Court of Appeals decision in Sweeney v. McCormick,
10 159 A.D.2D 832.

11 In addition to defining what those terms mean,
12 explaining them to the jury, the New York City Human Rights Law
13 enumerates several factors that mitigate against a finding of
14 punitive damages. They're actually listed in the statute
15 themselves, so we ask that those, those factors be specifically
16 added to the instruction. Those include a record of no or
17 relatively few prior incidents of discriminatory conduct by its
18 employees, the existence and scope of the university's
19 anti-discrimination policies and procedures, a meaningful and
20 responsive procedure for investigating complaints of
21 discriminatory practices by employees and for taking
22 appropriate action against those persons who are found to have
23 engaged in such practices, a policy against discriminatory
24 practices, which was effectively communicated to employees, a
25 program to educate employees about unlawful discriminatory

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1 practices, procedures for the supervision of employees
2 specifically directed at the prevention and detection of such
3 discriminatory practices. Each of those are factors that are
4 enumerated in the city law that we ask be added to the charge
5 if one is given.

6 THE COURT: All right.

7 MR. MELZER: Yes, your Honor. First of all, we
8 believe that there needs to be an instruction on this because
9 it is a liability instruction as to whether there is liability
10 for punitive damages that is based on defendant's conduct and
11 an assessment of that conduct. The language here comes from
12 the very recent Chauca cause and it is meant to be disjoined
13 that all of these things qualify. And it is also meant to be
14 very expansive, and to specifically contrast with what someone
15 needs to show under Title VII to allow more avenues for
16 achieving punitive damages. So the actions need to be willful,
17 negligent or wanton, negligence or recklessness or a conscious
18 disregard of the rights of others or conduct so reckless as to
19 amount to such disregard.

20 Taking these are supposed to be expansive, we're not
21 opposed to defining some of these terms, but it should be from
22 cases specific to the New York City Human Rights Law and
23 particularly recent cases that are in light of this standard.
24 And we can look at the factors on that are being referred to,
25 but right now we see no reason to announce factors that would

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1 preclude punitive damages, and it may be that those relate to
2 an assessment of the amount which the jury won't be doing at
3 this point.

4 MR. MUFSON: Your Honor, I've been practicing law for
5 a fair amount of time, and I have difficulty understanding what
6 some of these terms mean. So, I think that a clarification in
7 the instruction in terms of defining what these terms mean,
8 which it is a clear explanation of the law, would be helpful
9 for the jury.

10 MS. PLEVAN: It's in the statute.

11 MR. MUFSON: Right. In the statute, the enumerated
12 factors.

13 THE COURT: If something is in the statute, I don't
14 know why we wouldn't include it. We've had arguments about
15 factors and how many factors we put in or don't put in, which
16 is different than the definitional questions. If there are
17 factors in the statute, I don't know why we wouldn't tell the
18 jury about them, right. But in any event.

19 MR. MUFSON: We can submit a proposed instruction.

20 THE COURT: I do think if you have cases that deal
21 with the New York City Human Rights Law --

22 MR. MUFSON: Unfortunately, so we don't have cases
23 under the New York City Human Rights Law because the Chauca
24 decision is only a few months old interpreting what those mean.
25 So we pulled cases and instructions from general, civil --

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1 THE COURT: You're right. That of course makes sense.

2 MR. MELZER: Some of them are from federal law or
3 1994.

4 MR. MUFSON: The definitions haven't changed.

5 THE COURT: Any additional objections?

6 MR. MUFSON: Nothing further from Columbia.

7 THE COURT: Columbia's just going to submit their
8 markups. If you can footnote them or a separate page, I don't
9 care about the format, note what case or what you rely on for
10 that proposition. You don't have to do everything you said
11 today. Just to the extent there are particular cases you are
12 relying on for particular language, like the descriptions or
13 definitions of wanton and other relevant words, you can include
14 that. I will, whenever I have an updated draft, I'll send you
15 all an updated redlined version of the charge. And then why
16 don't we meet tomorrow at 9 and go over them so any additional
17 objections I can hear you out and I'll tell you what I'm going
18 to use so you can be prepared for summations. Okay?

19 MR. MELZER: Thank you.

20 THE COURT: I should ask, are there any additional
21 questions to the verdict form other than taking out the
22 question six and seven and changing the numbers?

23 MR. MELZER: None from plaintiff, your Honor.

24 THE COURT: I understand I simplified it. Defendants
25 requested a more complicated verdict form. I didn't think that

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1 was necessary. But, if you have specific objections, I'm happy
2 to hear you out.

3 MS. PLEVAN: Not at this time, your Honor.

4 THE COURT: Thank you.

5 (Adjourned until July 24, 2018, at 9 a.m.)

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